Reg'd 28 of 72 of 186
Friday 6th December 1861
Mr Bayne 12 oclock
Beckwith 1=20 PM
Monday 11=20 AM
Mr Robinson 11=40

SUPREME COURT OF THE UNITED STATES.

No. ~~260~~. 100. 28.

WALTER LAFLIN, Appellant,

vs.

AUGUSTUS M. HERRINGTON & AL., and the ILLINOIS CENTRAL RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GIDEON, Printer.

affirmed
Wayne

SUPREME COURT OF THE UNITED STATES.

No. 260.

WALTER LAFLIN, Appellant,

vs.

AUGUSTUS M. HERRINGTON & AL., and the ILLINOIS CENTRAL RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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PLEAS in the Circuit Court of the United States of America for the Northern District of Illinois, in Chancery sitting, at the city of Chicago, in said District, before the Hon. Thomas Drummond, Judge of the District Court of the United States for the District aforesaid, and in the absence pro tempore of the Hon. John McLain, one of the Justices of the Supreme Court of the United States, sole Judge of said Circuit Court, on Saturday, the fifteenth day of October, in the October adjourned term, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-fourth year. WM. H. BRADLEY, Clerk.

Northern District of Illinois, sct.

WALTER LAFLIN
vs.
AUGUSTUS P. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, JOSHUA TUTHILL and MARY TUTHILL, his wife, MARGARET HERRINGTON, CHARITY HERRINGTON, THADDEUS HERRINGTON, and CHARLES HERRINGTON, and the ILLINOIS CENTRAL RAILROAD COMPANY.

Be it remembered, that, on this day, to wit, the thirteenth day of December, in the year of our Lord one thousand eight hundred and fifty-six, in the December term, A. D. 1856, the said Walter Laflin, complainant, by Messrs. Higgins and Burgess, his solicitors, came into the office of the Clerk of the Circuit Court of the United States for the Northern District of Illinois, and filed his bill of complaint against Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Joshua Tuthill and Mary Tuthill, his wife, Margaret Herrington, Charity Herrington, Thaddeus Herrington, and Charles Herrington, and the Illinois Central Railroad Company, defendants, and also, at the same time, his bond for costs herein, which said bond for costs, and also the said bill of complaint, is in the words and figures following, to wit:—

United States of America, Northern District of Illinois, ss.

Circuit Court, Term, A. D. 1856.

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, CHARITY HERRINGTON et al. } In Chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to

any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 30th day of December, A. D. 1856.

MATTHEW LAFLIN.

Endorsed: Filed this 30th day of December, A. D. 1856.

WM. H. BRADLEY, Clerk.

To the Honorable the Judge of the Circuit Court of the United States for the Northern District of Illinois, in Chancery sitting.

Your orator, Walter Laflin, who is a citizen and resident of the State of Massachusetts, humbly complaining, and shows unto your honor that, as he is informed and verily believes, one William Stuart, on the ninth day of June, in the year of our Lord one thousand eight hundred and *and* thirty-seven, at a term of the Circuit Court then being holden in and for said county, by the judgment and consideration of the said court, recovered against James Herrington, then in life, since deceased, six hundred and forty-six dollars and seventy-two cents, for his damages, which he had sustained by occasion of the non-performance of certain promises and undertakings then lately made by said Herrington, and also his costs of suit, which judgment will more fully and at large appear on reference to the records of said court, and to which, for greater certainty, your orator prays reference may be had.

And your orator, upon his information and belief, further shows unto your honor, that the said judgment still remaining in full force, not reversed, vacated, or satisfied, and the said James Herrington being still in life on the ninth day of September, A. D. one thousand eight hundred and thirty-seven, and within one year after the rendition of said judgment, the said William Stuart caused to be issued out of said Circuit Court an execution upon said judgment to the sheriff of Kane County, commanding him to make the said sum of money and costs so recovered as aforesaid out of the lands and tenements, goods and chattels, of the said James Herrington, in his county, and to make due return thereof, which execution afterwards, during the life thereof, and before the return day thereof, was received by the then sheriff of said county, and afterwards by him returned, that he could find no property of the defendant whereon to levy and make the same, and was with such return thereon endorsed, afterwards duly filed in the office of the clerk of said court where the same now remains of record, and to which for greater certainty as to the contents thereof and the return thereto thereon made, your orator prays reference may be had.

And yourorator further shows, that as he is informed and believes, the said James Herrington was served with mesne process in the said original suit in the said Kane County, and resided therein at

the time of rendition of said judgment, and issuing, and return of said execution.

And your orator further shows, upon his information and belief, that afterwards, and somewhere about the year the said James Herrington departed this life intestate at his residence in Kane County in this State, leaving Charity Herrington, his widow, and Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Jane Herrington, Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, and one other child whose name is unknown to your orator, and since deceased, his children and heirs at law him surviving; that afterwards letters of administration were by the Probate Court of said Kane County granted and issued in due form of law to said Charity Herrington, the widow, who since has been, and now is, administratrix of all and singular the goods and chattels, rights, and credits, which were of the said James Herrington, deceased, at the time of his decease, all of whom your orator prays may be made defendants to this his bill of complaint.

And your orator further shows, upon his information and belief, that the said James Herrington died seized of all that certain tract of land situate in the county of Cook aforesaid, and described as follows, to wit: All that part of the northwest fractional quarter of section number twenty-two (22), in township number thirty-nine (39), north of range number fourteen (14), east of the third principal meridian, bounded north by that part of said fractional quarter section conveyed by James Herrington and his wife to John S. Wright by deed, dated the third day of December, A. D. 1834, and recorded in the recorder's office of said county in Book B of deeds on page 295, and on the west by the west line of said fractional quarter section, and on the south by land conveyed by James Herrington and wife to Penmon G. Wright, by deed dated the third day of June, A. D. 1835, recorded in said office in book H of deeds on page 118, and on the east by the east line of said fractional quarter section, being the shore of Lake Michigan.

And your orator further shows unto your honor, upon his information and belief, that after the death of said James Herrington, and on the 13th day of October in the year one thousand eight hundred and fifty-four, the said William Stuart caused to be served upon the said Charity Herrington so then being such administratrix of the estate of said James Herrington, deceased as aforesaid, a notice in writing of the existence of said judgment, that the same had been by him recovered against the said James Herrington during his lifetime, and that the same was still remaining in full force, and that he should, three months after the service of said notice upon her, sue out of said clerk's office execution upon said judgment against the lands and tenements which were of the said James Herrington, deceased, at the time of his decease, and whereof he died seized. That afterwards and on the 17th day of January, in the year one

thousand eight hundred and fifty-five, more than three months having elapsed after the service of said notice upon said Charity Herrington, and more than one year having elapsed after the death of said James Herrington, the said William Stuart caused to be issued out of said Circuit Court an alias execution in due form of law under the seal of said court to the sheriff of Cook County, commanding him that of the lands and tenements which were of James Herrington, deceased, at the time of his death, he should cause to be made the said sum of six hundred and fifty-six dollars and seventy-two cents in form aforesaid, recovered by said Stuart against said Herrington and his costs of suit, and to make return thereof in ninety days from the date thereof.

And your orator further shows unto your honor, upon his information and belief, that the said writ of execution afterwards and during the life thereof came into the hands of James Andrews, then being sheriff of said county, to execute, and was by him, before the return day thereof, levied upon the said premises herein above described, and he thereupon caused the same to be duly advertised for sale under said execution, on the sixth day of March, one thousand eight hundred and fifty-five, at ten o'clock in the forenoon of that day, at the north door of the court-house in the city of Chicago, at which time and place the said premises were struck off and sold to William H. Adams for the sum of one thousand three hundred and seventy-eight dollars and forty-two cents ($1378 42), being the highest sum bidden for the same and no one offering any more, that the same were struck off in four separate parcels amounting in the whole to said sum of money, and that thereupon the sheriff executed duplicate certificates of such sale, one of which he delivered to the said William H. Adams and the other of which he caused to be filed in the recorder's office of said county, and returned said execution satisfied in full by endorsement of the attorneys of the said plaintiff to that effect.

And your orator further shows, upon his information and belief, that the said William H. Adams was an old friend of the said Stuart, that the said Stuart, some five years after the recovery of said judgment, removed to the State of New York, where he has always since and now resides, that he wrote from thence to the said Adams and requested him to employ an attorney to collect or enforce the collection of said judgment, and the said Adams accordingly employed Farnsworth & Burgess, attorneys at law in the city of Chicago, to take the necessary legal steps to enforce the collection thereof, and that clothed with such authority the said Farnsworth & Burgess proceeded to take such steps as in their judgments were necessary to collect the same out of the estate of the said James Herrington, deceased; that William T. Burgess, of said firm, had the principal charge and management of the proceedings instituted and carried on for that purpose, that at his suggestion and without the knowledge of said Stuart, but for his sole use and benefit, the said land

was struck off in the name of said Adams as the purchaser thereof, that arrangement being conceived to be better for the interests of said Stuart than to have it bid off in the name of said Stuart, and that the fact that said Adams had bid the same off entirely for the use of said Stuart was at all times openly admitted.

And your orator further shows unto your honor, upon his information and belief, that about nine or ten months after said sale took place, said Augustus M. Herrington informed said William T. Burgess that he, said Augustus M. Herrington, was desirous of redeeming said lands from said sale, but in order to protect the title of said heirs thereto, and overreach a title which, he said, Matthew Laflin had acquired to an undivided interest in said lands, a tenth or eleventh part thereof under a deed from his mother, said Charity Herrington (the elder), either directly or by way of estoppel, he desired to obtain an assignment of said certificate to some person to hold for their benefit, and requested him to procure such assignment from said Adams, and he would then pay over the money the same as if he was redeeming from the said sale, which request said Burgess communicated to said Adam, who assented to it, and thereupon for the sole and only purpose of enabling said Burgess to receive in money the amount that would be necessary to redeem said land from said sale, and thereupon to make an assignment of said certificate to such person or persons as the said Augustus M. Herrington might select, the said Burgess wrote upon the back of said certificate of sale, which the said Adams had received from said sheriff as aforesaid, a writing purporting to be an assignment, but without mentioning therein the name of any person as assignee, and leaving a blank space for the insertion of the name of such person, and in that condition with said blank not filled up with any name, said Adams signed said writing, endorsed by said Burgess upon said certificate and left it with him, with instructions to pass the same over to said Herrington on the payment of said money, and on no other terms or conditions.

And your orator further shows unto your honor, upon his information and belief, that at the time said Herrington applied to said Burgess to procure said assignment of said certificate, he well knew or had notice that said Adams bid the said land off in his name for the use and benefit solely of said Stuart, and not for his own use or benefit.

And your orator further shows, upon his information and belief, that said Burgess left said certificate of sale so endorsed with said blank assignment signed by said Adams, in the office of said Farnsworth and Burgess, and that in the absence of said Burgess, and without his knowledge or consent the said Augustus M. Herrington went to the said John F. Farnsworth some time in January, 1856, and by false representations that the land sold by the sheriff had not been correctly described, induced him to take a note for one thousand and two hundred and seventy-eight dollars and forty-two

cents payable to Farnsworth and Burgess on the 6th day of September, 1856, with interest at ten per cent. thereon, and one other note for about the sum of one hundred dollars, also payable to them a short time thereafter, and thereupon to deliver to him said Augustus M. Herrington said certificate of sale with said endorsement in blank thereon, and that said Herrington soon thereafter paid said small note to said Farnsworth, but neither the said Adams or the said Stuart were aware that said small note had been given, or any such money had been paid until the first day of October, 1856, or within a few days of that date.

And your orator further shows unto your honor, upon his information and belief, that, at the time said Herrington procured said certificate from said Farnsworth, he distinctly and expressly stated and agreed that, if the arrangement then made between the said Farnsworth and him should not prove to be satisfactory to the said Stuart, the said certificate of sale should be returned to said Adams, to be held by him the same as if no such arrangement touching the same had ever been made between said Farnsworth and himself, and such statement and agreement was the principal inducement that led said Farnsworth to make the arrangement that was then made as aforesaid.

And your orator further shows unto your honor that, as he is informed and believes, the said Adams, as soon as he was informed of said transaction, distinctly and unequivocally repudiated it, and did not then, nor has he at any time received said notes, or either of them, or the money paid, or any part thereof, but on all occasions refused to ratify said arrangement; and said Herrington was immediately informed, and before the time for redemption had expired, that the said note would not be received, and that if he, Herrington, desired to redeem said lands from said sale, that he must pay the money necessary therefor; that, as soon as he, said Adams, was advised of this arrangement, he wrote to said Stuart, advising him thereof, who immediately wrote to said Farnsworth and Burgess, disapproving in the strongest language of the arrangement said Farnsworth had so made as aforesaid, and threatening to employ other attorneys to attend to the matter; and that said letter from said Stuart was also shown to said Augustus M. Herrington, and read by him before the time for the redemption of said premises from said sale had expired; and he well knew that said Stuart refused to ratify said arrangement, and that the same was very unsatisfactory to him, and would not be adopted, accepted, or ratified by him in any form or shape.

And your orator further shows, upon his information and belief, that the said Farnsworth had no authority whatever, either from the said Adams or the said Stuart, to make the arrangement that he did make as aforesaid with said Herrington touching the said certificate; and the same was wholly unauthorized by them or either of them; that said Adams signed the writing indorsed upon said certificate,

and left it in that condition with said Burgess, under the express understanding that the amount of money necessary, or that it would take to redeem said lands and premises from said sale, should be paid over, upon the transfer and delivery of the same, to said Herrington; and no variation in those terms was thereafter made, on any authority conferred upon said Burgess or said Farnsworth, to receive anything else but money; that the proposition made by Herrington, and out of which grew the preparing and signing of said indorsement on said certificate, was that of paying the amount of said sale, and ten per cent. per annum interest thereon, to the time he should receive the same in money at the time.

And your orator further shows, upon his information and belief, that the delivery of said certificate to said Augustus M. Herrington, with said blank indorsement thereon signed by said Adams, was entirely without authority from said Adams or said Stuart, and without their consent; and said Augustus M. Herrington was fully advised of the same long before the time of redemption expired, within which he and the other heirs of said James Herrington, deceased, might, by law, redeem the same from said sale; and that, if he or they desired to redeem the same from said sale, they or he must pay the money within the time and according to the statute in that case made and provided.

And your orator further shows, upon his information and belief, that the said Augustus M. Herrington has filled up the said blank in said writing, endorsed upon said certificate with his own name, with the intent hereby to claim thereunder the said land and obtain in his own name a sheriff's deed of said premises so sold as aforesaid.

And your orator further shows that, as he is advised and verily believes, the said writing so endorsed upon said certificate, with the blank therein as aforesaid, and signed by said Adams, if filled up with the name of any person as assignee thereof, either the said Augustus M. Herrington or any other person, is void and of none effect, by reason of the fraudulent manner in which the same was obtained by said Augustus M. Herrington as hereinabove set out, and by reason that the same never was, in fact, delivered by said Adams, or by any person by him thereunto lawfully authorized, and that the terms upon which the same was to have been delivered to him were not complied with by said Augustus M. Herrington.

And your orator further shows unto your honor that in and by the statute of the State of Illinois, entitled chapter forty-four, Frauds and Perjuries, it is provided that no action shall be brought whereby to charge any person upon any contract for the sale of lands or any estate or interest therein of a longer term than one year, unless such contract, or some note or memorandum thereof, in writing, and signed by the party to be charged therewith, or some person by him thereunto lawfully authorized; and your orator insists and claims that if the said blank is filled up with the name of any person

as assignee therein of said certificate, the said blank being so filled up without the knowledge or consent of said Adams or of said Stuart, the said writing endorsed on said certificate is contrary to the provisions of said statute, and void and of none effect; and your insists upon said statute as a bar to any rights or interests which the said Herrington or any other person or persons can or may claim under said certificate of sale to said lands under said assignment or otherwise touching the same.

And your orator further shows unto your honor, upon his information and belief, that at the time of said sale of said lands and premises under said execution the title of the same was involved in doubt and litigation, and that no other person but the said Stuart, acting through the said Adams, and in his name, would have bid off said lands and premises under said execution for the amount thereof in consequence of such doubts and litigation; that the said heirs of said Herrington, or some of them, well knew, before said sale, that said property was about to be exposed for sale under said execution, and yet neither advanced the money, though well able so to do, to prevent a sale, or bid themselves upon it at the sale, or procured or attempted to procure others to do so, but were then content, as it seems to your orators, to allow said property to be sold under said execution for the amount thereof; and that if any sacrifice of said property under said execution has taken place it has been wholly owing to the wilful neglect and laches on the part of said heirs in not redeeming or bidding at the sale of the same.

And your orator further shows, that the said William Stuart and Eliza G., his wife, by deed, dated the first day of October, A. D. one thousand eight hundred and fifty-six, in consideration of the sum of one thousand six hundred dollars therein recited to have been paid by your orator to them, did grant, bargain, sell, and convey the said premises with the appurtenances unto your orator, his heirs and assigns, in fee simple, as by the said deed now in the possession of your orator, ready to be produced and proved as this court shall direct, will more fully and at large appear, which deed was filed for record in said recorder's office, the day of December, A. D. 1856.

And your orator further shows, upon his information and belief, that, on the 9th day of October, A. D. 1856, by deed of that date, the said William H. Adams, for a valuable consideration to him paid by Julius C. Smith, did sell, assign, and transfer said certificate of sale to said Smith, and released and conveyed the lands therein described to him, and authorized him to receive a deed in his own name and to his own use from the proper officers therefor under said certificate and sale, which said assignment was by him duly acknowledged and filed for record the tenth day of October, A. D. 1856, as by the said assignment now in your orator's possession ready to be produced and proved as this court shall direct will more fully and at large appear.

And your orator further shows unto your honor, that the said

Julius C. Smith, by deed dated the twentieth day of November, A. D. 1856, in consideration of thirty thousand dollars therein by him acknowledged to have been received, did, with his wife, remise, release, alien, convey, and quit claim unto your orator the said lands and premises and all his right, title, and interest in and to the same, which deed was duly acknowledged, and is now in your orator's possession, ready to be produced and proved as this court shall direct, and was filed for record the day of December, A. D. 1856, in said recorder's office.

And your orator further shows unto your honor, that, for a valuable consideration by your orator duly paid, the said legal title of said Smith and the said equitable title of said Stuart in and to said lands and premises under said certificate of sale hath become and is vested in your orator, and he is now well entitled to the same in his own right.

And your orator further shows unto your honor, that neither the said Augustus M. Herrington or any other of the heirs of said James Herrington, deceased, or any grantee of said James Herrington, deceased, did within one year after said sale as at any time since pay to said Adams or to the sheriff, who made said sale, or to any other person entitled to receive the same, the money necessary to redeem said lands and premises or any part thereof from said sale, neither did the said Augustus M. Herrington pay or offer to pay said note of $1276 to said Adams or said Stuart, or to any other person or persons before said Adams assigned said certificate to said Smith.

And your orator further shows, that the said lands and premises so remaining wholly unredeemed from said sale by said sheriff thereof, your orator is now well entitled to have and receive from John L. Wilson, the now sheriff of said Cook County, a deed conveying to him absolutely by virtue of said sale all the interest vested in said James Herrington, deceased, at the time of his decease, and that the said writing indorsed upon said certificate and signed by said Adams tends to cast doubts and a cloud upon your orator's title to said premises, and should be removed by the decree of this court.

And your orator further shows, upon his information and belief, that the said heirs of the said James Herrington, whose name is unknown to your orator, and who is mentioned above as having departed this life since the death of said James Herrington, so died leaving no child or children, or descendants of such intestate, and leaving the other persons, widow, and heirs of said James Herrington, deceased, its heirs at law.

And your orator further shows, upon his information and belief, that the said heirs have recently by deed recorded in the month of December, A. D. 1856, conveyed an undivided interest in said premises to the Illinois Central Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Illinois.

And your orator further shows upon his information and belief, that the said Mary, since the decease of her said father, hath intermarried with one Joshua Tuthill, a citizen and resident of the State of Illinois, and a defendant in the bill of complaint.

And your orator further shows, upon his information and belief, that applications have been made by said Smith and by your orator to the sheriff of said county for a deed under said sale, but that in consequence of their inability to produce said certificate of sale, the said sheriff refused and refuses to make a deed.

And your orator further shows, upon his information and belief, that the said Augustus M. Herrington hath made and executed under his hand and seal a declaration setting forth that he acquired, and held, and holds said certificate of sale for the use and benefit of himself and others, the heirs of said James Herrington, deceased, as tenants in common thereof, that the said declaration of trust has been accepted by said heirs, and placed upon record in said county of Cook, and that the said writing endorsed upon said certificate hath been placed upon record in the recorder's office of said county with said blank filled up with the name of Augustus M. Herrington.

And your orator further shows that he had well hoped that said Augustus M. Herrington would have given up and surrendered said certificate of sale, and ceased to make any claim under and by virtue of the same, and the writing endorsed thereon to said lands and premises, but now so it is, may it please your honor, the said Augustus M. Herrington and the said other defendants combining and confederating with divers persons at present unknown to your orator, but whose names when discovered your orator prays may be inserted herein with proper and apt words, to charge them how to injure, vex, and harass your orator in the premises, neglects and refuses so to do, and claims that he is well entitled to said certificate by virtue of said endorsement, and to receive a deed of said lands by virtue thereof, all which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong, injury, and prejudice of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises at and after the strict rules of the common law, and can only have relief adequate in the premises in a court of equity, where matters of this sort are properly cognizable and relievable.

To the end, therefore, that the said Augustus M. Herrington, Charity Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Jane Herrington, Charity Herrington the younger, Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, and the Illinois Central Railroad Company, defendants to this bill of complaint, all of whom are citizens and residents of the State of Illinois, and of said Northern District, may without oath answer this bill and the several and

various matters and things herein alleged, their answer under oath to this bill being hereby expressly waived.

That the said Augustus M. Herrington, or any other of the defendants in whose possession the same may be, may be required to give up and surrender to your orator the said certificate of sale, so that the said writing thereon endorsed may be cancelled, and your orator retain and have possession and *and* control of the said certificate.

That the said Herrington may be enjoined and restrained from placing upon the records of said county said writing endorsed upon said certificate, and from filling up the blank therein contained with the name of any person whomsoever, and from setting up or insisting upon any claim to said lands and premises thereunder, or demanding or receiving either in his own name, or causing it to be done in the name of any other person, any deed of said lands, or any part thereof, under said certificate of sale and writing thereon endorsed, from the sheriff of said county or other officers authorized to make the same, until the further order of the court, and that such injunction be made perpetual.

And that said sheriff may be directed to make a deed of said lands and premises to your orator under said sale as assignee of the purchaser thereat, and that the said John S. Wilson, sheriff of said county, may be enjoined from making any deed of said premises under said sale to any person or persons, other than your orator, until the further order of the court, and that such injunction be made perpetual.

And that the said defendants may be decreed to have acquired and to hold no title, estate, or interest in or to said premises under and by virtue of said writing endorsed upon said certificate, and they and each of them required to release and quit claim what if any interest, right, or title they or any of them upon the face of said writing endorsed upon said certificate appear to have acquired or held in or to the same.

And your orator suggests that are minors, of whom he prays a guardian *ad litem* may be appointed.

And for such other relief, or further relief, as the nature of the case shall require, and as shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orator process of subpœna out of and under the seal of this court, commanding the said defendants above named by a certain day, and under a certain penalty, to be and appear before this court to answer this bill, and to stand to and abide by and perform the order and decree of this court in the premises.

And also process of injunction against them, enjoining and restraining them as hereinabove prayed for.

And your orator will ever pray.

WALTER LAFLIN.
W. S. BURGESS, Sol's.
VAN H. HIGGINS, of Counsel.

State of Illinois, County of Cook, ss.

William T. Burgess, of said county, having been duly sworn, says that he is one of the solicitors of the within named Walter Laflin in this bill of complaint; that said Laflin resides in the State of Massachusetts, and is not now, to the knowledge or behalf of this deponent, within the State of Illinois; that this deponent has read the within bill, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters stated to be upon information or belief, and as to those he believes it to be true.

W. T. BURGESS.

Subscribed and sworn to before me this 30th day of December, A. D. 1856.

Attest my hand and office seal.

[SEAL.] CHARLES N. HOLDEN,
Notary Public.

Endorsed: Filed Dec. 30th, 1856.

WM. H. BRADLEY, Clerk.

Whereupon on the same day, to wit, the thirtieth day of December, in the year last aforesaid, a writ of subpœna was issued out of said clerk's office, directed to the said defendants, and delivered to the marshal of the district aforesaid to execute, and was returned executed upon said defendants; which said writ of subpœna, and also the return of the marshal thereon, is in the words and figures following, to wit:—

United States of America, Northern District of Illinois, ss.

The United States of America to Augustus M. Herrington, Nathan P. Herrington, Charity Herrington the elder, James Herrington, Alfred Herrington, Jane Herrington, Charity Herrington the younger, Thaddeus Herrington, Margaret Herrington, Charles Herrington, Joshua Tuthill, and Mary Tuthill, his wife, the Illinois Central Railroad Company.

We command you, and every of you, that you appear before our judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in said District, on the first Monday in the month of February next, to answer the bill of complaint of Walter Laflin, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or therafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the Northern District of Illinois to execute.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this thirtieth day of December, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eighty-first.

[SEAL.] WM. H. BRADLEY, Clerk.

Memorandum.

The within named defendants are notified that unless they shall each of them enter their appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, Clerk.

I have executed the within writ by delivering a copy of the same to Margaret Herrington, and Charity Herrington the elder, and by leaving a copy of the same with Charity Herrington the elder, for Jane Herrington, Charity Herrington the younger, Thaddeus Herrington, Charles Herrington, Joshua Tuthill, and Mary Tuthill, his wife, their usual place of abode being at the house of Charity Herrington the elder, and by leaving a copy of the same for Augustus M. Herrington, Nathan P. Herrington, James Herrington, and Alfred Herrington, at their several place of abode with members of their families, white persons, past the age of ten years, this 7th day of January, A. D. 1857.

IRAM HOGE,
U. S. Marshal.
By S. W. FRENCH,
Deputy.

And this day, to wit, the thirty-first day of October, in the year of our Lord A. D. 1857, in the October term, A. D. 1857, the following proceedings were had in said court, in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, CHARITY HERRINGTON the Elder, JAMES HERRINGTON, ALFRED HERRINGTON, JANE HERRINGTON, CHARITY HERRINGTON the Younger, THADDEUS HERRINGTON, MARGARET HERRINGTON, CHARLES HERRINGTON, JOSHUA TUTHILL and MARY TUTHILL, his wife, the ILLINOIS CENTRAL RAILROAD COMPANY. } In Chancery.

The complainant in his bill having waived the oaths of the defendants in their answer thereto, it is thereupon considered and adjudged by the court that the defendants be permitted to answer without making oath to the same.

And this day, to wit, the twenty-first day of January, in the year of our Lord A. D. 1856, of the December term, A. D. 1856, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, CHARITY HERRINGTON the Elder, JANE HERRINGTON, et al. } In Chancery.

All the defendants herein, with the exception of Augustus M. Herrington, to wit, Nathan P. Herrington, Charity Herrington the elder, James Herrington, Alfred Herrington, Charity Herrington the younger, Thaddeus Herrington, Margaret Herrington, Charles Herrington, Joshua Tuthill and Mary Tuthill, his wife, and The Illinois Central Railroad Company by their solicitors Messrs. Goodrich, Farwell and Smith, come and enter their appearance.

And this day, to wit, the twenty-eighth day of February, in the year of our Lord, A. D. 1857, in the December term, A. D. 1856, the following proceedings were had in said court, in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, CHARITY HERRINGTON, et al. } In Chancery.

The defendant Augustus M. Herrington, by C. Beckwith, Esq., his solicitor, comes and enters his appearance herein.

And this day, to wit, the second day of March, in the year of our Lord 1857, in the March adjourned Term, A. D. 1857, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, et al. } In Chancery.

The defendants by Mr. Goodrich, their solicitor, move the court for an extension of time to answer the complainant's bill herein.

And this day, to wit, the eleventh day of March, in the year of our Lord 1856, in the March adjourned term, A. D. 1857, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, et al. } In Chancery.

On motion of the defendants, by their attorney, the time within which they are required to plead, answer, or demur to the complainant's bill is extended to the 20th instant.

And this day, to wit, the twentieth day of March, in the year of

our Lord 1857, in the March adjourned term A. D. 1857, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON,
NATHAN P. HERRINGTON et al. } In Chancery.

On application of the defendants by their solicitors, the time within which they are required to answer the complainant's bill herein is extended to the first Monday of April next.

And this day, to wit, the twentieth day of April, in the year of our Lord 1857, in the March adjourned term, A. D. 1857, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON,
NATHAN P. HERRINGTON et al. } In Chancery.

On application of the defendants by their solicitors, the time within which they are ruled to answer is extended to the first of May next.

And this day, to wit, the first day of May, in the year of our Lord one thousand eight hundred and fifty-seven, Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Joshua Tuthill, and Mary Tuthill, his wife, Margaret Herrington, and Charity Herrington, defendants, by Messrs. Goodrich, Farwell, and Smith, their solicitors, came into the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, and filed their joint and several answer to the foregoing bill of complaint, which said joint and several answer is in the words and figures following, to wit:—

United States Circuit Court, Northern District of Illinois.

In Chancery.

The joint and several answer of Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Joshua Tuthill, and Mary Tuthill, his wife, Margaret Herrington, and Charity Herrington, eight of the defendants, to the bill of complaint of Walter Laflin, complainant.

These defendants, now and at all times hereafter saving and reserving unto themselves and unto each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such part thereof as these defendants are advised

is or are material or necessary for them or any of them to make answer unto, these defendants, severally answering, say:—

That it may be true, for anything these defendants know to the contrary, that the said William Stuart recovered a judgment against the said James Herrington, deceased, as in the said bill of complaint alleged; but these defendants have no personal knowledge on the subject, and therefore neither admit nor deny the same, but require strict proof of the said judgment.

These defendants, further answering, say that they have no knowledge as to whether or not an execution issued, as alleged in the said bill of complaint, within one year from the rendition of said judgment, and therefore leave the complainant to prove the same as he may be advised.

And these defendants further answering, admit that the said James Herrington in March, 1839, departed this life intestate, leaving Charity Herrington, his widow, and Augustus M. Herrington, Nathan P. Herrington, James Herrington, Fanny Herrington (since deceased), Jane Herrington, Alfred Herrington, Thaddeus Herrington, Mary Herrington (since then married to Joshua Tuthill), Margaret Herrington, and Charles Herrington, his children and only heirs at law.

And these defendants further answering, admit that the said James Herrington died seized of the premises in the said bill mentioned, and that letters of administration were issued to the said Charity Herrington, one of these defendants, and that the said William Stuart caused to be served upon her a notice in writing of the existence of said judgment, and also caused an execution to be issued out of the office of the clerk of said Circuit Court for Cook County, directed to the sheriff of Cook County, and that the said sheriff professed by virtue of such execution to levy upon the said premises, and advertised the same for sale, as is in the said bill of complaint stated, and that on the 6th day of March, 1855, the said sheriff undertook to sell the above mentioned lands and premises by virtue of such execution, and that he professed to sell the same to the said William H. Adams, but these defendants deny that he sold the said lands for the sum of $\$1378\frac{42}{100}$, but on the contrary thereof, these defendants say that he sold that portion situate between State Street and Wabash Avenue, for $\$344\frac{60}{100}$, and that portion situated between Wabash Avenue and Michigan Avenue for $\$344\frac{60}{100}$, and that portion situate between Michigan Avenue and Lake Michigan for the sum of $\$344\frac{62}{100}$, that the said sheriff also professed to sell to the said Adams for the further sum of $\$344\frac{60}{100}$ a certain other piece of land bounded on the north and south the same as the lands above mentioned, but described as bounded on the west by the west line of said fractional quarter section, and on the east of State Street, which description is without meaning, and which boundary lines include nothing, inasmuch as the said west line of said fractional quarter section is on State Street.

And these defendants further answering, admit that the said sheriff executed and delivered to the said William H. Adams a certificate of such pretended sale, and that he afterwards filed a duplicate certificate in the office of the Recorder of Cook County.

And these defendants say, upon their information and belief, that no execution was issued upon said judgment to the sheriff of Cook County within one year from the time such judgment was rendered, and they therefore insist that the said judgment was not a lien upon said premises after the expiration of said year, and that the said levy and sale were not, nor was either of them authorized by law, but were and are wholly null and void.

And these defendants further say, upon their information and belief, that no execution was issued upon said judgment at any time within one year from the time such judgment was rendered, and they therefore insist that such judgment was not a lien upon said premises after the expiration of said year, and that the said levy and sale were not, nor was either of them authorized by law, but were and are wholly null and void.

These defendants further say, upon their information and belief, that no writ of scire facias was issued for the purpose of reviving said judgment after the death of the said James Herrington, deceased; and they insist that therefore the said execution so issued as aforesaid after the death of the said James Herrington, deceased, was issued without authority of law, and that said execution and the said levy and sale were and are, each and all of them, wholly null and void.

And these defendants, further answering, admit that the said Adams was an old friend of the said Stuart, and was requested by him to take such steps as were necessary to collect and enforce the said judgment, and that the said Adams accordingly employed the said Farnsworth and Burgess to act as attorneys in the matter. But these defendants say that they have no knowledge as to who suggested that Adams should bid off said premises, or as to whether he bid off the same without the knowledge of said Stuart, and, therefore, neither admit nor deny the same.

And these defendants, further answering, admit that nine or ten months after said sale took place, the said Augustus M. informed said Burgess that he was desirous of redeeming said lands from said sale, but that, in order to protect the title of the heirs thereto, and to cut off a claim or title which one Matthew Laflin had acquired to an undivided one fifty-fifth part of the same (and not a one-tenth or one eleventh part, as in said bill stated), he desired to obtain an assignment of said certificate to some person to hold for their benefit, and requested Burgess to procure an assignment from Adams, and that thereupon Burgess procured from Adams an assignment of such certificate endorsed thereon, with a blank for the insertion of the name of the assignee, and that said certificate was left by said Adams with said Farnsworth and Burgess, in their office, with di-

rections to fill up *up* the blank with the name of the said Augustus M. Herrington, or with the name of such other person as he should direct, and to deliver the same to the said Augustus M. on the payment of the sum due on redemption.

And these defendants, further answering, admit that at the time the said Augustus M. applied to said Burgess to procure such assignment of said certificate, he had been informed that Adams had bid off the said lands for the benefit of said Stuart, but these defendants say the said Augustus M., of his own knowledge, and the other defendants, upon their information and belief, that the said Augustus M. had also been informed by the said Farnsworth and Burgess, and Adams, or by some one or more of them, and verily believed, that the said Adams had the full control and management of the business the same as though he were the purchaser in his own right, and that the said Augustus M. also at that time supposed that the said sale was valid and that the premises sold had been correctly described, so that he would be obliged, on the redemption, to pay the full sum of $\$1,378\frac{42}{100}$ and interest.

And these defendants, further answering, say, the said Augustus M. of his own knowledge, and the other defendants upon their information and belief, that it is not true that the said Augustus M. Herrington, by false representations, induced the said Farnsworth to take the notes in the said bill of complaint mentioned, or either of them, or to deliver to the said Augustus M. Herrington the said certificate, nor is it true that at the time the said Augustus M. Herrington procured said certificate from the said Farnsworth, he stated or agreed that if the arrangement then made between them should not prove to be satisfactory to the said Stuart, the said certificate should be returned to the said Adams; nor is it true that any such statement or agreement induced the said Farnsworth to make the arrangement that was then made, or that the said Augustus M. filled up the blank in the assignment endorsed on said certificate, but on the contrary thereof, these defendants say, the said Augustus M. of his own knowledge, the other defendants upon their information and belief, that when the said Augustus M. applied to the said Farnsworth for said certificate, he made no statement as to the description of the premises except what was strictly true, that he stated that he had discovered that one of the parcels of land was imperfectly described, and that the heirs were not obliged to redeem from the sale of that parcel, and that if required to pay the money down, he should redeem from the sale of the other three parcels only, that it was not convenient for him to pay the money then, but that he was willing to pay the whole amount claimed provided he could have a few months' credit, and proposed to give his note payable on the 6th of September then next, and stated to the said Farnsworth that if Adams was not satisfied with that arrangement, he would make it satisfactory to him. And these defendants say that thereupon the said Farnsworth consented to take a note for all except one hundred

dollars, or thereabouts, that accordingly the said Augustus M. then and there gave the said note in the said bill of complaint mentioned, and not having the required sum of money with him, he gave his due bill for the sum of $\$108\frac{34}{100}$, which due bill he afterwards took up by giving a draft on Wm. B. West, banker as Geneva, on R. K. Swift & Co., which draft was paid when presented, to wit, on or about the 28th day of January, 1856; that the said Farnsworth, at the same time when said note was given, as aforesaid, filled up the blank in the assignment endorsed on the said certificate with the name of the said Augustus M. Herrington, and then delivered the said certificate to the said Augustus M. Herrington.

And these defendants further answering say, the said Augustus M., of his own knowledge, and the other defendants, upon their information and belief, that it is not true that the said Adams repudiated the said acts of the said Farnsworth, or refused to ratify the arrangement made between him and the said Augustus M., or that the said Augustus M. was informed before the time for redemption had expired that the said note would not be received, or that if he desired to redeem said lands from said sale he must pay the money; but that, on the contrary thereof, as these defendants have been informed and believe, and they so charge the fact to be, the said Farnsworth and Burgess immediately after such arrangement with the said Augustus M., informed the said Adams of what had been done, who in no way intimated to any of these defendants any dissatisfaction with regard to such arrangement, and these defendants do and will insist that by said silence he gave them to understand that he acquiesced in and was satisfied with such arrangement, and thereby ratified and confirmed the same.

And these defendants further say, that the first and only information which they or any of them had of any dissatisfaction on the part of either said Adams or Stuart was communicated to the said Augustus M., at Geneva, Kane County, on or about the 6th day of March, 1856, at which time Farnsworth showed unto the said Augustus M. a letter written by the said Stuart to the said Farnsworth and Burgess, in which he complains of their having taken the note, and threatens to hold them responsible for the amount, and says, that the taking of the note was not authorized by either Adams or himself, and says that Adams had informed him that the ground of settlement was that the description of the property was wrong, but that Adams also informed him that the description was right, that the said Farnsworth at the same time advised the said Augustus M. to go to Chicago as soon as convenient and see Adams and explain the matter to him, and arrange it to his satisfaction; that thereupon the said Augustus M. told said Farnsworth that after the close of the term of the Kane County Circuit Court, which they were both of them then attending, he would go to Chicago and see the said Adams and would arrange the matter to his (Adams) satisfaction, to which proposal and statement the said Farnsworth made no objection, but

expressed himself satisfied with the same; that the said Augustus M. pursuant to such promise, did, on or about the 1st day of April, 1856, go to Chicago, and had an interview with the said Adams at the office of said Farnsworth and Burgess, and stated to him the reasons why such note had been given, and why he, the said Augustus M. desired that he might have until the time when the said note would fall due in which to pay the money, rather than to be required to pay the money then, and thereupon the said Adams declared himself satisfied with the arrangement which had been made with said Farnsworth, and made no further objection to such note having been taken by said Farnsworth, and consented that the said Augustus M. should have the time for payment as requested, that the said Augustus M. heard nothing further from the said Adams, Stuart, Farnsworth, or Burgess, in relation to the said note until some time after the same fell due, when he received a letter from said Adams requesting payment of said note, and also a letter from said Farnsworth and Burgess written by said Burgess, and dated September 27th, 1856, requesting payment of said note, with which was enclosed a letter from said Stuart to said Farnsworth and Burgess, dated Sept. 22, 1856, in which he expresses his disappointment on learning that morning from Adams that the said note had not been paid, although it was due on the 6th of September.

And these defendants therefore do and will insist that both the said Stuart and the said Adams ratified and confirmed the said acts of the said Farnsworth as to the assignment and delivery of said certificate to the said Augustus M. as aforesaid.

And these defendants further answering say, upon their information and belief, that the said Adams is a land speculator, residing in Chicago, and having his place of business at the office of said Farnsworth & Burgess, who are, and for a long time have been, his legal advisers and attorneys; that he is accustomed to leave many of his papers and much of his business in their custody and charge; that if it is indeed true that the said Farnsworth & Burgess have not paid over to him the said sum of one hundred and eight and $\frac{34}{100}$ dollars, it is because he was not entitled to receive it from them by reason of the state of accounts between them, or because they retained that sum as a compensation for their services in relation to said proceedings and sale on said judgment and execution; that if the said Adams has not in fact taken the said note from the said office of Farnsworth and Burgess, yet said note has, at all times since the said was given, been under his control and in his possession in the law.

And these defendants further answering say, the said Augustus M., of his own knowledge, and the other defendants, upon their information and belief, that the said note and money have not, nor has either of them, been returned or repaid to the said Augustus M., nor has there been any offer to return or repay the same, except an offer contained in a certain letter from Farnsworth & Burgess, as

hereinafter stated; that the said Farnsworth, Burgess, Adams, and Stuart, did not, nor did any of them, at any time, after the said certificate was so assigned and transferred to the said Augustus M., and before the time for redemption from such sheriff's sale had expired, request or demand of the said Augustus M. that he should surrender or deliver up to them, or to any of them, the said certificate.

And these defendants further answering say, that they supposed and believed that the said Augustus M. had done all that was necessary in order to secure their right and title to such lands, and in order to protect themselves from all loss and damage by reason of such sale, and had no knowledge or suspicion that the said Adams would attempt at any time to repudiate the acts of his attorney, the said Farnsworth, or to deny his authority, or to deny that he, Adams, had fully ratified and confirmed all that the said Farnsworth had done; that the first knowledge or intimation that the said Augustus M., or any of these defendants, had that the said Adams intended to claim that the said acts of the said Farnsworth were null and void, and had not been ratified by, and were not binding upon the said Adams, was communicated a long time after the time for redemption had elapsed, and some time in the month of October, and after the said Smith filed his bill of complaint hereinafter mentioned.

And these defendants further answering say, the said Augustus M., of his own knowledge, and the other defendants upon their information and belief, that the said Stuart, Adams, Farnsworth, and Burgess, did not nor did any of them at any time before the latter part of the month of October last past, allege or pretend to the said Augustus M., or to any of these defendants, that the said acts of the said Farnsworth were null and void, by reason of his want of authority from the said Stuart, or by reason of such acts having been repudiated by the said Stuart, nor did they pretend but that the said Adams had such interest, right, and authority to act in reference to the redemption from said sale, and the assignment of such certificate as was in all respects sufficient to render such redemption and assignment perfect both at law and in equity, that so far from any such allegations or pretences having been made by them, or by either of them, on the contrary thereof, these defendants say upon their information and belief, that the said Smith on the 11th day of October, A. D. 1856, filed his bill of complaint in the Cook County Court of Common Pleas, on the chancery side thereof, against these defendants, and the other heirs of the said James Herrington, deceased, praying for substantially the same relief which the said Laflin prays for in this suit, and setting forth substantially the same cause of action, with this difference however, that in the said bill of complaint of the said Smith, it is nowhere stated, charged or intimated that the said Adams bid off the property for the said Stuart or for his use, or that the said Stuart had any interest in the said purchase so made by the said Adams, or that the said Stuart

was in any way interested in the redemption from said sale, or in the said certificate or the assignment thereof, or in the said acts of the said Farnsworth.

And these defendants, upon their information and belief, say that the said bill of complaint of the said Smith was signed and sworn to by him, and that it was drawn by the said Burgess or pursuant to his advice and directions, and after a full discussion of the facts in the case between the said Adams, Smith and Burgess.

And these defendants further answering, say that they had not nor any of them any knowledge or suspicion of any allegations or pretence that the said Adams was not authorized to assign the said certificate without authority from the said Stuart, or that the said acts of the said Farnsworth were void on account of want of authority from the said Stuart, or because he had not ratified the same, until after the said suit had been commenced by the said Smith, and some time in the latter part of October, when the said Augustus M. received a letter from the said Farnsworth and Burgess, written by the said Burgess, of which the following is a copy, viz:—

Chicago, October 23d, 1856.

A. M. Herrington, Esq.—

Dear Sir: We are under the necessity, owing to Mr. Wm. Stuart's refusal to notify the arrangement made by one Mr. F. with you about the certificate of sale of what is called the Laflin property, to refund you the money you paid Mr. F. about the 28th January last, $108 $\frac{34}{100}$ with interest, now amounting to $116 $\frac{46}{100}$. If you will advise us how we shall remit it to you, or draw on us for the amount, we will duly honor your advices or draft.

Yours, &c.,

FARNSWORTH & BURGESS.

And these defendants, further answering, say, the said Augustus M., of his own knowledge, and the other defendants upon their information and belief, that the said note for $1,278 $\frac{42}{100}$ so given by the said Augustus M., was given by him in good faith and with the expectation and intention on his part of promptly paying the same when due; that, during the months of September and October, he was necessarily absent from home the greater part of the time, and his time and attention were so much engrossed with other affairs that he was prevented from making such provision for the prompt payment of said note as he ought to have done, and otherwise would have done; that the said Augustus M., having been for many years upon intimate and friendly terms with the said Farnsworth & Burgess, and having frequently met the said Adams at their office and elsewhere, had no suspicion that they or any of them would make him any costs or trouble on account of a few days' delay in paying said note, or would attempt to take any advantage of such delay; that the said Augustus M. soon after the commencement of the said suit

by the said Smith and before the commencement of this suit, called at the office of said Farnsworth and Burgess, and produced in the presence of said Burgess a large sum of money in gold and silver coin, and more than sufficient to pay said note, and offered to pay the same and interest thereon, and demanded that such note should be produced and delivered to him; that said Burgess admitted that such note was in the office, but refused to either receive the money or to surrender the note; that the said Augustus M. was at all times after the said tender and up to the time of the commencement of this suit, able, ready, and willing to pay said note; and that these defendants are ready, and hereby offers to stand to, abide by, and perform whatever, if any, order, judgment, or decree, this honorable court shall make in relation to the payment of said note.

And these defendants, further answering, say, that they had no knowledge or suspicion before the commencement of this suit, that there was any irregularity in the issuing of the execution or in the levy upon said lands, but on the contrary supposed that such proceedings were regular, and that the said judgment was a subsisting lien upon said lands.

And these defendants, further answering, admit that, at the time of such pretended sale, the title to said lands was involved in litigation, a suit in ejectment having been brought in the Cook County Court of Common Pleas by the said heirs of the said James Herrington, deceased, against one Matthew Laflin, a brother of the said complainant, Walter Laflin, for the purpose of testing the validity of a claim to the said lands, which the said Matthew Laflin had set up; but these defendants say upon their information and belief, that such suit was decided in favor of the said heirs and against the said Matthew Laflin before the said sale by the said sheriff, to wit, at the February term of said court, A. D. 1854, which judgment was affirmed by the Supreme Court of Illinois, at the June term, A. D. 1855, which put an end to all doubts as to the validity of the title of the said heirs; that the said lands were then worth at least the sum of two hundred and fifty thousand dollars, and are now worth at least the sum of three hundred thousand dollars; that the said heirs not knowing but that the said judgment was a lien upon the said lands, nor but that the said execution had been regularly issued, nor but that the said sale had been regular, intended to redeem the said lands from the said sale, and relied upon the said Augustus M. to make such redemption, he being an attorney-at-law by profession, and having the general charge and superintendence of the burning of the estate.

And these defendants further answering say, that they know not and have not been informed, save by the said complainant's bill, and cannot set forth as to their belief or otherwise, whether or not the said Stuart and wife have made and delivered unto the said complainant the deed in said bill mentioned, nor whether the said Adams has made the assignment or conveyance to said Smith, in

the said bill mentioned, nor whether the said Smith has made and delivered to the said complainant the deed in said bill mentioned, and these defendants therefore require strict proof of the same.

And these defendants further answering say, that whatever instruments in writing may have been made and delivered by the said Stuart, Adams, and Smith, or by either of them, for the purpose, or with the intent of conveying or transferring to the said Walter Laflin, any right or title either at law or in equity, in or to the said above mentioned premises, and whatever consideration either real or pretended, may in such instruments in writing have been acknowledged as paid or received, yet these defendants say upon their information and belief, that it is not true that the said Walter Laflin has, by means of any such instruments in writing, pretended conveyances or assignments, acquired any right *any right* or title, either at law or in the equity, in or to the said premises, and these defendants insist that even if the said judgment was a subsisting lien upon the said premises, and if the said execution was regularly issued, and if the facts in relation to the assignment and delivery of the said sheriff's certificate are as in the said bill of complaint stated (which these defendants expressly deny), yet that such supposed course of action is not assignable, and that no such pretended conveyances and assignments from the said Stuart, Adams, and Smith, can be sufficient to enable the said Walter Laflin to maintain this suit, or to entitle him to the relief prayed for in his said bill of complaint.

And these defendants further answering admit, that the said Fanny Herrington died leaving no child or children, and leaving the heirs at law in said bill mentioned.

And they also admit the conveyance to the Illinois Central Railroad Company as in said bill mentioned.

And they also admit the marriage of the said Mary with the said Joshua Tuthill, as in said bill mentioned.

And these defendants further answering admit, that the said Augustus M. hath made a declaration of trust as in said bill mentioned, and that said declaration of trust hath been recorded in the recorder's office of Cook County.

And these defendants further answering, deny that the said James Herrington left any child or heir at law named Charity Herrington.

And these defendants say, that the said Jane Herrington, in the year 1856, sold and conveyed all her right, title, and interest in and to the said lands and premises above described, unto the said Augustus M. Herrington, who thereby became and still remains the sole owner of such share and interest of the said Jane Herrington.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are charged by the said bill, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or

necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

AUG. M. HERRINGTON,
N. P. HERRINGTON,
JAMES HERRINGTON,
JOSHUA TUTHILL,
ALFRED HERRINGTON,
CHARITY HERRINGTON,
MARY H. TUTHILL,
MARGARET HERRINGTON.

GOODRICH, FARWELL & SMITH,
Sol'rs for Defts.

GRANT GOODRICH, of Counsel for Defts.

UNITED STATES OF AMERICA.
Northern District of Illinois, ss.

Kane County, ss.

On this 27th day of April, A. D. 1857, before me personally appeared Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Joshua Tuthill, and Margaret Herrington, and severally made oath that he has heard read the above *the above* answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

[SEAL.] Witness, Paul R. Wright, Clerk of the Kane County Circuit Court, and the seal thereof, at Geneva, this 27th day of April, A. D. 1857.

PAUL R. WRIGHT, Clerk.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

Kane County, ss.

On this 27th day of April, A. D. 1857, before me personally appeared Charity Herrington and Mary Tuthill, and Margaret Herrington, and severally made oath that she has heard read the above answer of her subscribed, and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated to be on her information or belief, and as to those matters she believes it to be true.

[SEAL.] Witness, Paul R. Wright, Clerk of the Kane County Circuit Court, and the seal thereof, at Geneva, in said county, the 27th day of April, 1857.

PAUL R. WRIGHT, Clerk.

Endorsed: Filed May 1st, 1857.

WM. H. BRADLEY, Clerk.

And this day, to wit, the first day of May, in the year of our Lord one thousand eight hundred and fifty-seven, Thaddeus Herrington and Jane Herrington, defendants, by Messrs. Goodrich, Farwell & Smith, their solicitors, came into the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, and filed their joint and several answer to the foregoing bill of complaint, which said answer is in the words and figures following, to wit:—

United States Circuit Court, Northern District of Illinois.

In Chancery.

The joint and several answer of Thaddeus Herrington and Jane Herrington, two of the defendants to the bill of complaint of Walter Laflin, complainant.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereunto *admit* that James Herrington departed this life in the month of March, 1839, intestate, leaving him surviving his said widow and ten children, his only heirs at law, and that he died seized of the lands and real estate in the said bill mentioned.

And these defendants further answering say, that they do not know, and have not been informed, save by the said complainant's bill of complaint, and cannot set forth upon their belief or otherwise whether or not the said Stuart recovered a judgment against the said James Herrington, or whether execution was issued thereon within one year from the rendition of such judgment, or whether such notice was served on the administratrix as in the said bill mentioned, or whether the said lands and premises were levied upon or sold by virtue of such execution, or whether the said sheriff gave a certificate to said Adams as the purchaser at such sale, or whether such certificate was by mistake, or through the wrongful acts of the said Farnsworth, or of any other person, assigned or transferred to the said Augustus M. Herrington, and these defendants, therefore, do not admit any of the statements in that behalf in said bill contained, but require strict proof of the same.

And this defendant avers that on or about the year 1856, the said Jane Herrington did, by a good and sufficient deed of conveyance, assign and convey unto the said Augustus M. Herrington, all her right, title, and interest in and to the lands and premises above mentioned, as from the said deed, or from a certified copy of the

record thereof, now ready to be produced, will more fully and at large appear.

And these defendants therefore say that she hath not now, nor has she claimed to have since such deed was so given by her as aforesaid, any right, title, or interest of, in, or to the said lands or premises or any part thereof.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are charged by the said bill, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable and charges in this behalf most wrongfully sustained.

GOODRICH, FARWELL & SMITH,
Sol'rs for Defts.

GRANT GOODRICH, of Counsel for Defts.

Endorsed: Filed May 1st, 1857.

WM. H. BRADLEY, Clerk.

We hereby consent that the within answer may be put in without the signature of the defendants.

HIGGINS & BURGESS, for Compl'ts.

And this day, to wit, the first day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the Illinois Central Railroad Company, defendant, by Messrs. Goodrich, Farwell, and Smith, its solicitors, came into the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, and filed their separate answer to the foregoing bill of complaint. Which said answer is in the words and figures following, to wit:—

United States Circuit Court, Northern District of Illinois.
In Chancery.

The separate answer of the Illinois Central Railroad Company, one of the defendants, to the bill of complaint of Walter Laflin, complainant.

This defendant now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such part thereof as this defendant is advised is or are material or necessary for this defendant to make answer unto.

This defendant admits that James Herrington departed this life

in the month of March, 1839, intestate, leaving him surviving his said widow and ten children his only heirs-at-law. That he died seized of the lands and real estate in the said bill mentioned, and that said heirs have by deed conveyed unto this defendant an undivided interest in said premises as in said bill mentioned, but this defendant saith that the said heirs, the grantors in said deed named previously to and on the 16th day of October, A. D. 1856, were or pretended to be seized in fee simple, and were in or pretended to be in the actual possession of all those lands and premises in the said bill mentioned and described, free from all liens, claims, right or interest of any other person or persons whatever, either legal or equitable; and this defendant, believing that the said grantors in said deed named were so seized and entitled, and that the said lands and premises were in fact free from all liens, claims, right or interest, either legal or equitable, of any other person or persons, on the 16th day of October, A. D. 1856, agreed with the said grantors for the purchase of an undivided interest therein, as in said bill of complaint mentioned; whereupon the said grantors, in consideration of the sum of nineteen thousand dollars, then and there paid to them by this defendant, did then and there execute and deliver unto this defendant the said deed in said bill mentioned, thereby conveying unto this defendant, the said right and interest in the said deed specified, as by the said deed reference being thereunto had will more fully appear; and this defendant doth aver that *that* the said sum of $17,000 the consideration money in the said deed mentioned, was actually paid by this defendant to the said grantors, at the time the said deed bears date, and this defendant doth also aver that at or before the time of the execution and delivery of the said deed, and of the payment of the said purchase money, this defendant had no notice whatsoever, that the said Adams, Stewart, Smith, or Laflin, or any or either of them, had or claimed to have any right, title, or interest, either at law or in equity, in or to the said premises, or any portion thereof; and this defendant insists that it is a *bona fide* purchaser of the right and interest in said deed mentioned, for a good and valuable consideration and without any notice of any claim on the part of the said Stewart, Adams, Smith, and Laflin, or of any or either of them; and this defendant claims the same benefit as of this defendant had pleaded the same.

And this defendant further answering saith, that it doth not know, and has not been informed, save by the said complainant's bill of complaint, and cannot set forth upon the belief of this defendant, or otherwise, whether or not the said Stuart recovered a judgment against the said James Herrington, or whether execution was issued thereon within one year from the rendition of such judgment, or whether such notice was served on the administratrix as in said bill mentioned; or whether the said lands and premises were levied upon or sold by virtue of such execution, or whether the said sheriff gave a certificate to said Adams as the purchaser at such sale; or

whether such certificate was by mistake, or through the fraudulent acts of the said Augustus M. Herrington, assigned or transferred to the said Augustus M.; and this defendant therefore doth not admit any of the statements in that behalf in said bill contained, but requires strict proof of the same.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith this defendant is charged by the said bill, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GOODRICH, FARWELL & SMITH,
Sol'rs for Def't.

Endorsed: We hereby consent that the within answer may be put in without the signature of this defendant.

HIGGINS & BURGESS,
For Compl't.

GRANT GOODRICH,
Of Counsel for Def'ts.

Endorsed: Filed May 1st, 1857.

WM. H. BRADLEY, Clerk.

And this day, to wit, the sixteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, Walter Laflin, the aforesaid complainant, by Messrs. Higgins & Burgess, his solicitors, came into the office of the clerk of the Circuit Court of the United States for the Northern District, and filed his replication to the several answers of the aforesaid defendants heretofore filed herein, which said replication is in the words and figures following, to wit:—

In the Circuit Court of the United States for the Northern District of Illinois.

In Chancery.

The *Replication* of Walter Laflin, complainant, to the answers of Augustus M. Herring, Nathan P. Herrington, James Herrington, Alfred Herrington, Joshua Tuthill, and Mary Tuthill, his wife, Jane Herrington, Thaddeus Herrington, Margaret Herrington, and Charity Herrington, and the Illinois Central Railroad Company, def'ts, to the bill of complaint of the said complainant.

This repliant saving and reserving all just exception to said answers, yet nevertheless for replication thereto says, that he will aver, maintain, and prove, the said answers to be untrue, uncertain, and

insufficient, and his said bill to be true, certain, and sufficient, and he prays as in and by his said bill he hath already prayed, &c.

HIGGINS & BURGESS,
For Compl't.

Endorsed: Filed May 16th, 1857.
WM. H. BRADLEY, Clerk.

And this day, to wit, the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, in the May adjourned term, A. D. 1857, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN vs. AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON et al.	In Chancery.

On motion of the complainant by his solicitor, it is ordered by the court that Wm. H. Bradley, Esq., be appointed guardian ad litem for the following infant defendant herein, to wit, Charles Herrington and Margaret Herrington.

And this day, to wit, the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, Charles Herrington and Margaret Herrington, minor defendants herein, by their guardian ad litem, Wm. H. Bradley, Esq., came into the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, and filed their answer to the foregoing bill of complaint which said answer is in the words and figures following, to wit:—

In the Circuit Court of the United States for the Northern District of Illinois.

WALTER LAFLIN vs. AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, JOSHUA TUTHILL and MARY TUTHILL, his wife, MARGARET HERRINGTON, CHARITY HERRINGTON, JANE HERRINGTON, THADDEUS HERRINGTON, CHARLES HERRINGTON, THE ILLINOIS CENTRAL RAILROAD COMPANY.	In Chancery. Bill.

The answer of Charles Herrington and Margaret Herrington, who are minors, by W. H. Bradley, their guardian ad litem, appointed for them by the court in this cause.

This respondent says, as such guardian ad litem, that he has no knowledge of the several and various matters charged in said bill of complaint, and therefore can neither admit or deny the same, and

he submits to the court the rights of said minor defendants under such proofs as may be made in the cause.

WM. H. BRADLEY,
Guardian ad litem of infant Def'ts.

Endorsed: Filed June 1st, 1857.

WM. H. BRADLEY, Clerk.

And this day, to wit, the first day of July, in the year of our Lord 1857, in the July term, A. D. 1857, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
A. M. HERRINGTON et al. } Chancery.

Ordered that John W. Magill be and he is hereby appointed commissioner in this cause to take testimony in this State of Illinois.

The following stipulation appears filed among the papers in this cause in the words and figures following, to wit:—

United States Circuit Court, Northern District of Illinois.

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON. } In Chancery, Jan. 23d, 1858.

It is hereby stipulated and agreed that an order may be entered referring it to Ely, Esq,, a commissioner of this court, to take whatever further proofs the parties may desire to take in this suit upon oral interrogatories.

W. P. BURGESS, for Compl't.
WM. W. FANWELL, Sol'r for Def'ts.

Endorsed: Filed Jan'y 22d, 1858.

WM. H. BRADLEY, Clerk.

And this day ,to wit, the fifteenth day of June, in the year of our Lord 1858, in the May adjourned term, A. D. 1858, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, CHARITY HERRINGTON the elder, JAMES HERRINGTON, ALFRED HERRINGTON, JANE HERRINGTON, CHARITY HERRINGTON the younger, THADDEUS HERRINGTON, MARGARET HERRINGTON, CHARLES HERRINGTON, JOSHUA TUTHILL and MARY TUTHILL, his wife, and THE ILLINOIS CENTRAL RAILROAD COMPANY.

Now comes the complainant by his solicitors, and on his motion it is ordered by the court that this cause be dismissed as to the de-

fendant Charity Herrington the younger. And now comes the defendants by their solicitors, and by agreement this cause is set down for hearing upon the bill, the answer thereto, the replication, exhibits, and testimony on file, and after hearing the arguments of counsel until the hour of adjournment without concluding the same, the further arguments of counsel are postponed until to-morrow morning.

And this day, to wit, the sixteenth day of June, in the year of our Lord 1858, in the July term, A. D. 1858, the following proceedings were had in said court in said entitled cause, and entered of record to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON,
NATHAN P. HERRINGTON, et al. } In Chancery.

Now come again the parties by their respective counsel, and, after hearing the further arguments of counsel until the hour of adjournment without concluding the same, the concluding arguments of counsel are postponed until to-morrow.

And this day, to wit, the seventeenth day of June, in the year of our Lord 1858, in the May adjourned term, A. D. 1858, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON,
NATHAN P. HERRINGTON, et al. } In Chancery.

Now come again the parties by their respective counsel, and, after hearing the concluding arguments of counsel, the court not being sufficiently advised in the premises, takes the same under advisement.

And this day, to wit, the twenty-first day of September, in the year of our Lord 1859, in the July term, A. D. 1859, the following proceedings were had in said court in said entitled cause, and entered of record, to wit, present both the judges:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, JOSHUA TUTHILL, and MARY TUTHILL, his wife, MARGARET HERRINGTON, CHARITY HERRINGTON, THADDEUS HERRINGTON, and CHARLES HERRINGTON, a minor, and the ILLINOIS CENTRAL RAILROAD COMPANY. } In Chancery.

Now come the parties by their solicitors, and at their instance, this cause having heretofore been set down for hearing before the

Hon. Thomas Drummond on the bill, answer, pleadings, and proofs on file, and now, by consent and agreement of parties, this cause is brought on for rehearing before a full bench, and, after progressing until the hour of adjournment arrived, the further hearing thereof is postponed until to-morrow morning.

And this day, to wit, the twenty-second day of September, in the year of our Lord 1859, in the July term, A. D. 1859, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, JOSHUA TUTHILL, and MARY TUTHILL, his wife, MARGARET HERRINGTON, CHARITY HERRINGTON, THADDEUS HERRINGTON, and CHARLES HERRINGTON, and the ILLINOIS CENTRAL RAILROAD COMPANY. } In Chancery.

Now come again the parties, and, after hearing the conclusions of the arguments of counsel, the court, not being fully advised, take said cause under advisement.

And afterwards, to wit, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-nine, the following bill of exceptions were filed in said cause, and reads in the words and figures following, to wit:—

In the Circuit Court of the United States for the Northern District of Illinois.

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, JOSHUA TUTHILL, and MARY, his wife, MARGARET HERRINGTON, CHARITY HERRINGTON, JANE HERRINGTON, THADDEUS HERRINGTON, CHARLES HERRINGTON, and the ILLINOIS CENTRAL RAILROAD COMPANY. } Bill.

Be it remembered, that at the hearing of this cause the complainants, for the purpose of making the allegations of their bill correspond with the proof taken and read in evidence in the cause, propose to amend said bill by inserting therein the amendment which is hereto annexed; and thereupon the court allowed the same to be filed as an amendment to the said bill for that purpose—to which defendants objected.

And that when the defendants offered to read in evidence the letters of William Stuart to Farnsworth & Burgess, mentioned in deposition of John F. Farnsworth as "Exhibit D," and dated Sept. 22, 1856, the complainants objected, and also read in evidence a letter

purporting to be written by said Stuart (to which no objection was made by deft's), dated Jan. 1, 1858, which is as follows:—

Binghampton, Jan'y 1, 1858.

Messrs. Farnsworth & Burgess—

Gents: I have lately been advised that my note of the 22d Sept., 1856, addressed to you on business, which you then had the management of as my professional advisers, had been by you transmitted to Mr. A. M. Herrington with a request to return it, which he declines doing, and is seeking to use it as evidence in a cause now pending in the U. S. Court of your district.

The transmission of the note to him was, and the introduction of it by him as evidence now, would be a violation of the confidence I reposed in you as my professional advisers. I insist upon your regaining the possession of it, and object to that communication being used as evidence at any time or place, or in any controversy whatever. Respectfully yours, &c.,

WM. STEWART.

The court overruled the objection, and allowed said letters to be read in evidence, of the date of Sept. 22, 1856, to which ruling of the court the complainants then and there excepted.

And inasmuch as the rulings of said court in the premises do not appear of record in said cause, the complainant hath tendered this his bill of exceptions to the Hon. Thomas Drummond, Associate Judge of said court, in the absence of the Hon. John McLain, Judge thereof, to be signed and sealed according to law, and it is done accordingly. THOMAS DRUMMOND. [SEAL.]

The "amendment" referred to in the foregoing bill of exceptions reads in the words and figures following, to wit:—

In the Circuit Court of the United States for the Northern District of Illinois.

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON et al. } In Chancery. Bill.

Amendment to bill filed under leave of court.

And your orator further shows upon his information and belief, that upon the execution docket, kept in the office of the clerk of said Cook County Circuit Court, there is an entry made by the then clerk of said court, that on the nineteenth day of July, A. D. one thousand eight hundred and thirty-seven, an exception was issued, directed to the sheriff of Kane County, in said State, upon the judgment in favor of said Stewart, and against said James Herrington (since deceased), for and costs of suit, and a memorandum made on the margin of said execution docket, stating that the said execution was the same day sent to the said sheriff.

And your orator shows that he is not otherwise informed whether or not any such execution was in fact issued, but he insists that the same, if issued, was either not received at all by said sheriff, being lost in course of transmission to him, or if received by him, that it was lost by him, that no money was in fact made thereon, no levy made on property thereunder, nor was said judgment in any way or to any amount paid or satisfied thereunder, and the same not appearing by the records of said court ever to have been returned, the said court, on application duly made to it for that purpose, ordered the said execution to be issued upon said judgment, under which said sale took place as herein alleged, as by the records of said court reference bearing thereunto had will more fully appear.

SCATES & HIGGINS,
Sol'rs for Compl'ts.

Endorsed: Filed Sept. 22, 1859.

WM. H. BRADLEY, Clerk.

And this day, to wit, the fifteenth day of October, in the year of our Lord 1859, in the October adjourned term, A. D. 1859, the following proceedings were had in said court in said entitled cause and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, JOSHUA TUTHILL and MARY TUTHILL, his wife, MARGARET HERRINGTON, CHARITY HERRINGTON, THADDEUS HERRINGTON, and CHARLES HERRINGTON and THE ILLINOIS CENTRAL RAILROAD COMPANY.

The defendant, Augustus M. Herrington, having heretofore paid into court the amount of principal and interest due on the note dated March sixth, eighteen hundred and fifty-five, given by him, and payable to Farnsworth and Burgess, and referred to in the pleadings and proofs in this cause, to wit, the sum of one thousand eight hundred and sixty-four dollars and thirty-five cents; and the court having fully considered and being now fully advised upon the matters submitted herein; it is, therefore, ordered, adjudged, and decreed that the complainant's bill of complaint be dismissed at the complainant's costs.

[And this day, to wit, the nineteenth day of October, in the year of our Lord 1859, in the October term, A. D. 1859, the following proceedings were had in said court in said entitled cause and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, JOSHUA TUTHILL, and MARY TUTHILL, his wife, MARGARET HERRINGTON, CHARLES HERRINGTON, THADDEUS HERRINGTON, and THE ILLINOIS CENTRAL RAILROAD COMPANY.

Now comes the complainant by his solicitor, and prays an appeal in this behalf to the Supreme Court of the United States, which is granted upon his filing bond in the penalty of fifteen hundred dollars, conditioned according to law, with M. Laflin surety therein given.*]

[*The foregoing, inclosed in brackets, is crossed in the original.]

And this day, to wit, the seventh day of November, in the year of our Lord one thousand eight hundred and fifty-nine, in the October adjourned term, A. D. 1859, the following proceedings were had in said court in said entitled cause and entered of record, to wit:—

WALTER LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, JOSHUA TUTHILL, and MARY TUTHILL, his wife, MARGARET HERRINGTON, CHARLES HERRINGTON, THADDEUS HERRINGTON, and CHARITY HERRINGTON, and THE ILLINOIS CENTRAL RAILROAD COMPANY.

It is ordered that it be certified that the following evidence and documents were introduced, on the hearing of this case, on the part of the plaintiff: "The deposition of William H. Adams, the exhibits thereto attached, and the original certificate of sale which a copy is attached to said deposition." "The deposition of Noah B. Spaulding, and the exhibits thereto attached." "The copy of entry in the execution-docket of said Cook County Circuit Court, under the seal of that court." "The assignment of certificate of sale from William H. Adams to Julius C. Smith." "The deed from William Stuart and wife to Walter Laflin." "The deed from Julius C. Smith and wife to Walter Laflin." "The transcript of the record from the Supreme Court of the State of Illinois of the proceedings and judgment in that court in a cause wherein Matthew Laflin was plaintiff, and A. M. Herrington and others were defendants."

And that the following evidence and documents were introduced on the hearing of this cause on the part of the defendant, to wit: "The deposition of John F. Farnsworth, and the exhibits thereto attached, exception being taken to 'Exhibit D,' as specified in bill of exceptions taken and filed in this cause." "The deposition of

John Van Horn." "The deposition of Julius G. Lumbord." "The deposition of Thomas Allen." "The transcript of the record in the case of Julius C. Smith against A. M. Herrington and others." "The deed to the Illinois Central Railroad Company."

The deposition of William H. Adams, the exhibits thereto attached, and the original certificate of sale, which a copy is attached to said deposition.

United States, Northern District of Illinois, ss.

Be it remembered, that on the first day of July, Anno Domini one thousand eight hundred and fifty-seven, personally appeared William H. Adams, before me, John W. Magill, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., to testify, and the truth to say, on the part and behalf of the complainant in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the Northern District of Illinois, on the chancery side thereof, whereof Walter Loflin is complainant, and Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Joshua Tuthill and Mary Tuthill, his wife, Margaret Herrington, Charity Herrington, Thaddeus Herrington, and Charles Herrington, a minor; and the said witness being of lawful age, and he having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:—

Interrogatory first. What is your name, age, residence, and occupation?

Answer. My name is William H. Adams; I am 45 years of age; I reside in the city of Chicago; I am a real estate agent.

2. Interrogatory second. Do you know Augustus M. Herrington, one of the defendants in this suit, and, if so, how long have you known him?

Answer. I do; I have known him 3 or 4 years, I believe.

3. Interrogatory third. Do you know William Stewart, of the State of New York? If so, how long, and where did he reside in 1854 and since?

Answer. I do know him; I have known him for 20 years and over; he resided at Binghampton, in the State of New York, in 1854; he has resided there since that time.

4. Interrogatory fourth. Do you know anything about said Stewart's having a judgment against James Herrington (now deceased), in the Circuit Court of this Cook County? Had you anything to do with enforcing the collection thereof? If so, state what and when.

Answer. I know of his having such a judgment; he sent a statement of it to me requesting me to ascertain if it could be collected; I placed it in the hands of Farnsworth & Burgess, requesting them

to use such measures as they should deem necessary to collect it; they renewed the judgment, as I understood it, got out an execution, and levied upon property that formerly belonged to James Herrington, and sold it; the same was sold to satisfy the execution; the property was bought by me at the sheriff's sale; I received a certificate of sale from the sheriff, the original whereof is now produced, and the paper marked "A," which I offer to be annexed to this my deposition is a true copy thereof; the property was sold on the sixth day of March, 1855, at the door of the court-house.

5. Interrogatory fifth. How and for whom did you purchase this property at this sale? State the circumstances under which you purchased it.

Answer. I requested Mr. Burgess to bid it in for me, to bid on the property for me to the amount of the judgment or the execution and costs; I was acting as agent for William Stuart, the plaintiff in the execution; I purchased it for William Stuart, the plaintiff in the case.

6. Interrogatory sixth. What afterwards became of this certificate, and what were the circumstances under which you parted with the possession of said certificate?

Answer. The certificate was left with Mr. Burgess; shortly before the time of redemption expired, Mr. Burgess called on me with the certificate, stating that Mr. Herrington wished to pay the amount, and wished me to make an assignment of the certificate; Mr. Burgess wrote the assignment, leaving a blank for the name of the person it was to be assigned to, and without date; I told him before executing the assignment not to let it leave his hands until he received the money upon it due, with the assurance that he would not; I signed it; I left it with Burgess.

7. Interrogatory seventh. State what occurred afterwards in connection with said certificate; give dates as near as you can recollect them.

Answer. Shortly before the time of redemption expired, I think probably in January, 1856, I don't recollect the exact date, Mr. Farnsworth, the partner of Mr. Burgess, delivered the certificate to Augustus M. Herrington, took a note from him for the amount due on the execution, the note being made payable in the following September. As soon as I was informed of this proceeding, I objected to it, and told Mr. Farnsworth that I knew it would not be satisfactory to Mr. Stuart. I immediately wrote to Mr. Stuart informing him of the fact, and he replied that he was very much dissatisfied with the arrangement, and repudiated it entirely. He also wrote to Farnsworth and Burgess, disapproving of the course that had been taken in the matter.

Here the witness is shown a letter addressed to Messrs. Farnsworth and Burgess, dated Binghamptom, Feb'y 25, 1856, which is marked Exhibit "B," a true copy of which is annexed to this deposition.

Witness says. This is the letter which I refer to above. I know the letter to be in the handwriting of Mr. Stuart. The whole of the letter is in his handwriting. This is the same letter that was shown me soon after it was received.

8. Interrogatory eighth. After you heard of the delivery by Farnsworth to Augustus M. Herrington of said certificate, did you have any conversation with said Herrington about it? If so, state the time, place, and what was said.

Answer. I had a conversation with Mr. Herrington at my office, I think within a month after the certificate was delivered to him. I don't remember dates very distinctly. Mr. Herrington stated to me that there had been an error in the description of property; that he wanted the certificate in order to get a sheriff's deed upon the whole property described in the certificate, as it covered some other interest. I told him that I was acting as the agent of Mr. Stuart, and that if he had no objections to the arrangement made by Mr. Farnsworth, that I had none, and should be glad to see it done; this was the purport of the conversation. I immediately wrote Mr. Stuart. This conversation was in the office of Farnsworth and Burgess, where I had my office, and Mr. Farnsworth was in the room at the time. I wrote Mr. Stuart at the time, and received the letter I have mentioned before in reply, addressed to me; the one to Messrs. Farnsworth and Burgess came the same mail.

9. Interrogatory ninth. What interest or whose interest in this land was it that Herrington alluded to in this conversation? State what he said about it, and why he wanted to get this assignment.

Answer. I think he stated that there was an interest that Matthew Laflin had received through his mother—Herrington's mother—and he thought a sheriff's deed would cut this off.

10. Interrogatory tenth. Did you in this conversation with said Herrington say anything about writing to Stuart? If so, what was it?

Answer. I told him I would write to Mr. Stuart, and if Mr. Stuart had no objection to the arrangement made with Mr. Farnsworth, that I had none.

11. Interrogatory eleventh. Did you ever have the note alluded to by you in your answer to the 7th direct interrogatory above, in your possession? Did you ever see said note, and, if so, when was the first time?

Answer. I refused to receive that note, and never have seen it until to-day, when it was shown me for the first time. I never had that note in my possession.

12. Interrogatory twelfth. Have you in your possession the letter addressed to yourself, and received in reply to the one you wrote to said Stuart, as stated by you in your answer to the 7th direct interrogatory? If not, do you know what has become of it and where it now is?

Answer. It is not now in my possession, and I don't know where it is. I don't know what has become of it.

13. Interrogatory thirteenth. Have you searched for said letter, and where and when, and with what result?

Answer. I have searched for said letter to-day in my office, among the files of letters in my office, and have not been able to find it.

14. Interrogatory fourteenth. Where do you usually keep your letters and papers of this character, and what places have you searched for said letter?

Answer. I keep them in a pigeon-hole in my office, on file generally. I have looked for this one there where I generally keep them. I don't know of any place now where I could have left it; in my opinion it is lost.

15. Interrogatory fifteenth. Have you any copy of said letter? If you have, produce it; if not, state the contents thereof as near as you can recollect them.

(Objected to.)

Answer. Interrogatory withdrawn.

16. Interrogatory sixteenth. When did you last see said letter or know of its being, and are there any places that you have not searched, where it could probably be found? If so, state them. Could you probably find it on making further search? And have you any knowledge of what has become of it?

Answer. I don't recollect when I last saw the letter. I don't know of any other places where it would be likely to be found. I think I would not be likely to find it if I made further search. I do not know what has become of it.

17. Interrogatory seventh. Have you any copy of said letter? If you have, produce it; if not, state the contents thereof as near as you can recollect them.

Answer. Objected to by defendants' solicitors, for the reasons that they have not laid the proper foundation for such interrogatory.

Witness answers. I have no copy of said letter. The substance of the letter was, "Mr. Stuart stated that he was very much in want of money, and would not sanction or approve of any measure calculated to delay the collection of it; that he was very much surprised at the course taken by Mr. Farnsworth, and regretted having placed the business in their hands." That is all I can recollect of it.

Defendants' solicitors enter their objection to the answer of the witness to preceding interrogatory.

18. Interrogatory eighteenth. Did you show this letter to Farnsworth after you received it? If so, when, how soon after you received?

Answer. I showed it to Mr. Farnsworth immediately after receiving it.

Direct examination closed.

Cross-examined.

1. Cross-interrogatory first. Are you related to William Stuart by marriage or otherwise? If so, how?

Answer. I am related to him by marriage, our wives are sisters.

2. Cross-interrogatory second. Have you a copy of the letter which in your answer to the 7th interrogatory you say you wrote Mr. Stuart? If so, produce the same.

Answer. I have not.

3. Cross-interrogatory third. In your answer to the ninth interrogatory you stated that Herrington told you he desired to cut off a certain interest that Matthew Laflin had in the property; did he not at the same time state the amount of such interest, and that it was $\frac{1}{25}$th part of the whole, and did he not assign as a reason for wishing to do so, that said Matthew Laflin was endeavoring wrongfully to get the entire property away from the heirs of James Herrington, deceased? or something to that effect.

Answer. I think he stated that it was $\frac{1}{25}$th part of the whole; he may have said that Matthew Laflin was endeavoring wrongfully to get the entire property away from the heirs of James Herrington, deceased, or something to that effect, but I have no recollection of it now.

4. Cross-interrogatory fourth. Did you in your search for letters to day from Stuart, find any letters from him dated or written at any time between the months of January and October, 1856, relating to this subject?

(Objected to on the ground that no such letters were inquired about on the direct examination.)

Answer. I did.

5. Cross-interrogatory fifth. Have you such letters in your possession now, and if so, where are they?

Answer. I have those that I have seen to day in my possession in my office at the Metropolitan Block at the corner of La Salle and Randolph Streets.

6. Cross-interrogatory sixth. Will you produce them for the inspection of counsel?

(Objected to.)

Answer. Why I'd rather not, as the counsel do not agree that I should do so.

7. Cross-interrogatory seventh. What counsel do you refer to in your answer to the last interrogatory? Name the persons.

Answer. I'd state that the counsel for the plaintiff and defendant not agreeing upon it, else I'd bring them.

8. Cross-interrogatory eighth. The counsel for which party objected to your producing them; give their names.

Answer. The counsel for the plaintiff, Mr. Burgess and Higgins.

9. Cross-interrogatory ninth. Did you after your interview with A. M. Herrington, and before the middle of October of that year,

1856, with any letter or letters to A. M. Herrington? If yea, when and where were they sent or directed?

Answer. I think I did, I don't recollect the date; directed to Geneva, Kane County, Illinois.

10. Cross-interrogatory tenth. How many did you write?

Answer. I have no recollection.

11. Cross-interrogatory eleventh. Did you not shortly before the note fell due write said A. M. Herrington a letter notifying him of the time when the note would be due, and requesting him to meet it promptly at maturity, or to that purport?

(Objected to.)

Answer. I may have done so, I have no distinct recollection of it.

12. Cross-interrogatory twelfth. What is your best recollection on that subject?

Answer. I think I may have written such letter.

13. Cross-interrogatory thirteenth. Is it your best recollection that you did so write or not?

(Objected to.)

Answer. Well I have no distinct recollection respecting it.

14. Cross-interrogatory fourteenth. Did you not after the note became due write to him one or more letters, urging and pressing immediate payment of said note?

(Objected to.)

Answer. I have no recollection of the date when I wrote any letters to him.

15. Cross-interrogatory fifteenth. If you cannot give the precise date, state whether you did not write a letter to said A. M. Herrington, urging the payment of said note.

(Objected to.)

Answer. I think I may have written such a letter.

16. Cross-interrogatory sixteenth. Will you state distinctly whether you did or did not write such a letter?

(Objected to.)

I don't recollect.

17. Cross-interrogatory seventeenth. Is your recollection upon this subject better or worse than upon any other subject you have testified to?

Answer. I would think it was about the same, perhaps not as good.

18. Cross-interrogatory eighteenth. Did you not frequently write to Herrington upon the subject of this note?

(Objected to.)

Answer. I think not upon the subject of the note. I wrote to him both before and after the time of redemption expired in relation to the matter, stating to him what Mr. Stuart had written to me upon the subject.

(The latter part of the answer is objected to by defendants' counsel as not being responsive to the interrogatory.)

19. Cross-interrogatory nineteenth. Did you ever write to Mr. Herrington before this interview that you have spoken of between you and him?

Answer. I did, to the best of my recollection.

20. Cross-interrogatory twentieth. State whether you received a letter from Mr. Stuart on this subject of the sale or assignment of the certificate, prior to the one of which you have given the contents, and which you say you received on the same day that Farnsworth and Burgess received theirs.

Answer. No, I think not.

21. Cross-interrogatory twenty-first. Have you sold or assigned your interest in the certificate, or in the premises therein described to Julius C. Smith? If yea, when and on what consideration?

Answer. I did sell it to J. C. Smith last fall, date not recollected, for the amount of the execution and interest which I remitted to Mr. Stuart.

22. Cross-interrogatory twenty-second. Did Smith before and at the time of such sale keep his office or make it his place of business in Chicago in the same office with yourself?

Answer. He did.

23. Cross-interrogatory twenty-third. Was not Smith, before he purchased of you, acquainted with the dispute that had arisen concerning this property, and with the circumstances attending the transfer of the certificate; and had it not been the subject of conversation between you and Smith, or in his presence?

(Objected to.)

Answer. Smith was acquainted with the circumstances attending the dispute; he was acquainted with the circumstances attending the transfer of the certificate; it had been the subject of conversation between me and Smith.

24. Cross-interrogatory 24th. Do you know who negotiated or effected the alleged sale of the certificate or of the premises therein described, from the said Smith to the complainant Walter Laflin?

(Objected to.)

Answer. Not of my own knowledge, but have heard that it was Matthew Laflin, I have heard it from Smith.

25. Cross-interrogatory twenty-fifth. Did Matthew Laflin at any time before the sale to Walter Laflin make any inquiries of you, or have any conversation with you as to this property, or as to the dispute which had arisen about this certificate?

(Objected to.)

Answer. He never spoke to me on the subject.

26. Cross-interrogatory twenty-sixth. Did you procure the deed of the property from Stuart to Walter Laflin, and if so, at whose request?

Answer. I did not.

27. Cross-interrogatory twenty-seventh. Do you know who procured such deed? If so, state when.

Answer. I do not know of my own knowledge, I have never seen the deed.

28. Interrogatory twenty-eighth. Have you been informed who procured such deed? If yea, state who you have been informed procured it.

(Objected to.)

Answer. I have been informed that it was procured by Mr. Burgess.

29. Interrogatory twenty-ninth. Do you know whether Mr. Burgess acted as the agent of Walter Laflin in the negotiation between Smith and Laflin for the purchase of the property, and for the procurement of the deed from Stuart to Laflin?

Answer. I do not know of my own knowledge, but I have understood that he was the agent of Walter Laflin in procuring the deed. I do not know that he had anything to do with the purchase from Smith.

30. Interrogatory thirtieth. By whom were you informed of this?

(Objected to.)

Answer. I don't recollect, but think it was by Burgess.

31. Interrogatory thirty-first. Have you at any time received any letters from A. M. Herrington with reference to the certificate or note?

Answer. I think not, I have no recollection of having received any.

32. Interrogatory thirty-second. Did you not, previous to the time the deed was given from Stuart to Walter Laflin, hear Matthew Laflin converse with Burgess and Smith, or with one of them, with reference to this property, or with reference to the dispute with Herrington as to the certificate?

(Objected to.)

Answer. I never heard them converse upon the subject.

33. Cross-interrogatory thirty-three. Did you not frequently during the time above referred to see Matthew Laflin in Burgess's office, and in consultation with Burgess or Smith.

Answer. I saw him there occasionally in conversation with Smith.

34. Cross-interrogatory thirty-five. Did you, prior to your interview with A. M. Herrington which you have referred to, write to A. M. Herrington on the subject of the transfer of the certificate?

Answer. I don't recollect distinctly, I think I did before our interview, but I may be mistaken.

Waived. WM. H. ADAMS.

Subscribed and sworn to before me, this second day of July, A. D. 1857. JNO. W. MAGILL,
U. S. Com. Nor. Dist. Ill.

United States, Northern District of Illinois, ss.

I, John W. Magill, a commissioner, appointed by the Circuit

Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under and by virtue of the acts of Congress, do hereby certify that by virtue of the following order, entered in the records of said Circuit Court, to wit: July 1st, 1857, ordered that John W. Magill be, and he is hereby appointed commissioner in this cause to take testimony in the said cause; and that on the first and second day of July, Anno Domini one thousand eight hundred and fifty-seven, I was attended by Messrs. Burgess and Higgins, of counsel for said complainant, and by Messrs. Wilson, Goodrich and Farwell, of counsel for the defendants, and by the witness who was of sound mind, and lawful age, and the witness having been by me carefully examined and cautioned, and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witnesses, who subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same to the court for which it was taken. I further certify that the papers or exhibits attached hereto and marked sheriff's certificate, and Exhibit "B," are true and correct copies of their originals, produced before and examined by said witness at the taking of his testimony as aforesaid, and referred to by him in his foregoing deposition.

In testimony whereof I have hereunto set my hand, this 13th day of July, A. D. 1859. JOHN W. MAGILL,
U. S. Commissioner,
For Northern District of Illinois.

Sheriff's Certificate of Sale.

State of Illinois, County of Cook.

I, James Andrew, sheriff of Cook County, do hereby certify that by virtue of a certain alias writ of execution to me directed from the Circuit Court of Cook County, in favor of William Stuart, plaintiff, against the lands and tenements which were of James Herrington, deceased, at the time of his death, defendant, for six hundred and forty-six $\frac{72}{100}$ dollars damages and costs, dated the seventeenth day of January, eighteen hundred and fifty-five; I did on this sixth day of March, eighteen hundred and fifty-five, at ten o'clock in the forenoon, at the north door of the court-house in Chicago, in the said county, the time and place aforesaid, having been duly advertised according to law, sell at public vendue the following described parcels of land, to wit:—

All that part of the northwest fractional quarter ($\frac{1}{4}$) of section number twenty-two in township number thirty-nine (39) north of range No. (14) fourteen east of third principal meridian, bounded north by that part of said fractional quarter section conveyed by James Herrington and his wife to John S. Wright by deed dated the 3d day of December, 1834, recorded in the recorder's office of said county in book B of deeds, on page 295, and on the west by

the west line of said fractional quarter section, and on the south by land conveyed by James Herrington and his wife to Truman Wright by deed dated the 3d of June, 1855, recorded in said office in book H of deeds on page 118, and on the east by State Street, to William H. Adams, for the sum of three hundred and forty-four dollars and sixty cents, said sum being the highest and best bid offered for said parcel of land, and also all that other part of said fractional quarter section bounded north by that part thereof conveyed by James Herrington and his wife to John S. Wright by said deed dated the 3d day of December, A. D. 1834, and on the west by State Street, and on the south by land conveyed by James Herrington and his wife to Truman Wright by said deed dated the 3d day of June, A. D. 1855, and on the east by Wabash Avenue, to William H. Adams for the sum of three hundred and forty-four dollars and sixty cents, said sum being the highest and best bid offered for said last mentioned parcel of land.

And also all that other part of said fractional quarter section bounded north by that part thereof conveyed by James Herrington and his wife to John S. Wright by said deed dated the 3d day of December, A. D. 1834, and on the west by Wabash Avenue, and on the south by land conveyed by James Herrington and his wife to Truman Wright by said deed, dated the 3d day of June, A. D. 1835, and on the east by Michigan Avenue, to William H. Adams, for the sum of three hundred and forty-four dollars and sixty cents, said sum being the highest and best bid offered for said last mentioned parcel of land.

And also all that other part of said fractional quarter of said section bounded north by that part thereof conveyed by James Herrington and his wife to John S. Wright, by said deed dated the 3d day of December, 1834, and on the west by Michigan Avenue, and on the south by land conveyed by James Herrington and wife to Truman Wright, by said deed dated the 3d day of June, 1835, and on the east by Lake Michigan, to William H. Adams, for the sum of three hundred and forty-four dollars and sixty-two cents, said sum being the highest and best bid offered for said last mentioned parcel of land.

And the said purchaser will be entitled to a deed for the premises so sold on the 7th day of June, eighteen hundred and fifty-six, unless the same shall be redeemed as is provided by law.

(Sig'd) JAMES ANDREW, Sheriff.
By F. S. BUCKLY, Deputy.

For value received I do hereby sell, assign, transfer, and set over to A. M. Herrington the within certificate of sale, and all my rights and interest to the lands therein described, or the redemption money paid to redeem the same by virtue thereof.

Witness my hand and seal this sixth day of March, A. D. 1855.

(Sig'd) WM. H. ADAMS. [SEAL.]

Endorsed: This is the paper, exhibit, or document, which, by consent of counsel, is annexed to this deposition, the same being a true copy of original sheriff's certificate referred to by said witness in his hereunto annexed deposition, July 2d, 1857.

JNO. W. MAGILL, U. S. Com.

Binghampton, February 25, 1856.

Messrs. Farnsworth & Burgess.

Gentlemen: I was greatly surprised to receive a letter from Wm. H. Adams, of Chicago, this morning, informing me that Mr. Burgess, of your firm, had settled with Herrington, and taken his note payable in September next, for the amount of the execution in my favor. This proceeding was entirely unknown to and unauthorized either by Mr. Adams or myself, and will not be *sanctioned* or *recognized*—a proceeding entirely foreign to your instructions, your obligations, and your duty, as your letters retained, &c., will show. The sale took place, I believe, about the middle of February last, and I had relied on the amount of the sale money for purposes for which I had appropriated it, as soon as the time for redemption expired. I shall expect it, and demand it accordingly, and hold you responsible for it, deducting your commission on the amount *collected, not to be collected.* I shall so inform Mr. Adams and Mr. Herrington. I must take the liberty of saying that you have throughout this whole matter manifested a spirit of impatience and a course of conduct that I did not recognize as proper or usual when I practised law in Chicago, or have since. I have fortunately all your letters on file, and Mr. Adams as a witness in the proceeding.

Respectfully, WM. STUART.

Mr. Adams informs me that the ground of settlement was given that the description of the property was wrong, and on this false statement and assumption the strange and unauthorized settlement was made. Mr. Adams informs me that the description is right.

W. S.

Endorsed: "Exhibit B."

This is the paper, exhibit, or document, referred to by the witness as a true copy of original Exhibit B, as testified to by him in the annexed deposition, July 2, 1857. JNO. W. MAGILL,
U. S. Com.

Endorsed: Opened for the def't's counsel June 7th, 1858.
WM. H. BRADLEY, Clerk.

The Deposition of Noah B. Spaulding, with the Exhibits thereto attached.

United States, Northern District of Illinois, ss.

Be it remembered, that on the twenty-fourth day of August, Anno Domini one thousand eight hundred and *and* fifty-seven, personally

appeared Noah B. Spaulding, before me, John W. Magill, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., testify and the truth to say, on the part and behalf of the complainant in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the Northern District of Illinois, wherein Walter Laflin is complainant, and Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Joshua Tuthill, Mary Tuthill his wife, Margaret Herrington, Charity Herrington, Thaddeus Herrington, Charles Herrington, a minor, and the Illinois Central Railroad Company, defendants, and the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and *and* nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say, as follows, viz:—

1. Interrogatory first. State your name, age, residence, and occupation.

Answer. My name is Noah B. Spaulding; I am about 48 years of age; I reside in Geneva, Kane County, Illinois; I am a travelling agent for a railroad company.

2. Interrogatory second. How long have you resided in said county of Kane?

Answer. Since May, 1856; it was not a county then, however; it was then a part of La Salle County.

3. Interrogatory third. Did you know James Herrington, then alive, since deceased? If so, when and how long did you know him?

Answer. I knew him from the fall of 1835, up to his death in the year 1839.

4. Interrogatory fourth. Did you know Charity Herrington, his widow? If so, how long have you known her?

Answer. I have known her from my first acquaintance with him up to the present time.

5. Interrogatory fifth. Look at Exhibit marked "A" annexed to your deposition, purporting to be a transcript, under the seal of the Circuit Court of Cook County, from the records thereof, and state upon whom you served the notices, copies of which are therein set out and marked on the margin of said transcript No. 1 and No. 2, respectively, and when did you so serve the same?

Answer. On the 13th day of October, 1854, I served two notices corresponding with these on Charity Herrington, the widow of James Herrington, deceased.

6. Interrogatory sixth. Did you know David Dunham of said Kane County, administrator of said James Herrington? If so, how long did you know him? Is he now living? If not, when did he die?

Answer. I knew David Dunham from about 1837, to the time of his death, in August, 1852.

Cross-examined.

1. Cross-interrogatory first. You state in your answer to the sixth interrogatory, that you served notices on Charity Herrington, please state what means you have of knowing when it was, and whether the copies your refer to are like the originals.

Answer. My means of knowing was from going and reading over the originals at the court-house in this city, and comparing the copies attached to Exhibit A with the originals, about 20 minutes before my examination was commenced.

NOAH B. SPAULDING.

Sworn to before me this 24th day of August, A. D. 1857.

JNO. W. MAGILL, U. S. Com.

United States, Northern District of Illinois, ss.

I, John W. Magill, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing deposition and the fact is that the same was taken under and by authority of a certain order of court entered of record in said Circuit Court, in said cause, and also by agreement of parties. I further certify, that on the said twenty-fourth day of August, Anno Domini one thousand eight hundred and fifty-seven, I was attended by William T. Burgess, Esquire, solicitor for the complainant, and by Augustus M. Herrington, solicitor for the defendants, and by witness, who was of sound mind and lawful age, and the witness having been by me carefully examined and cautioned and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting to the court for which the same were taken; and I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause, and that the papers appended hereto are the identical papers referred to by the witness Spalding in his said deposition.

In testimony whereof I have hereto set my hand this third day of January, A. D. 1858. JNO. W. MAGILL,

United States Commis'r Nor.Dist. of Ills.

State of Illinois, Kane County, ss.

The people of the State of Illinois, to all to whom these presents shall come, greeting :—

Know ye, that whereas James Herrington, of the county of Kane, and State of Illinois, died intestate as it is said on or about the 25th day of March, A. D. 1839, having at the time of his decease personal property in this State, which may be lost, destroyed, or dimin-

ished in value, if speedy care be not taken of the same. To the end therefore *therefore*, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint Charity Herrington, of the county of Kane, and State of Illinois, administratrix, and David Dunham, of the county and State aforesaid, administrator, of all and singular the goods and chattels, rights and credits, which were of the said James Herrington at the time of his decease, with full power and authority to secure and collect the said property and debts wheresoever the same may be found in this State, and in general to do and perform all other acts, which now are, or hereafter may be required of them by law.

Witness ISAAC WILSON,
Probate Justice of the Peace, in and for said county of Kane.

And given under my hand and private seal (no official seal having as yet been provided), at my office in Geneva, this 14th day of May, A. D. 1859. ISAAC WILSON. [SEAL.]

State of Illinois, Kane County, ss.

I, James Herrington, Clerk of the County Court within and for the said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the letters of administration, issued to Charity Herrington, administratrix, and David Dunham, administrator, of the estate of James Herrington, deceased, as appears from the records in my office.

In testimony whereof, I have hereunto set my hand and the seal of said court, this 28th day of August, A. D. 1857.

[SEAL.] JAMES HERRINGTON, Clerk.

Endorsed: This is the paper, exhibit or document, produced at the examination of Noah B. Spalding, August 24th, 1857.

JNO. W. MAGILL.
U. S. Com. Nor. Dist. Ill.

Monday, May 22d, 1837, May Term.

Pleas before the Honorable John Pearsons, Judge of the Seventh Judicial Circuit of the State of Illinois, and presiding Judge of the Cook Circuit Court, at a Circuit Court began and held at the court-house in Chicago, on Monday, the 22d day of May, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States, the sixty-first.

Present: Honorable John Pearsons, Judge; Richard J. Hamilton, Clerk; Alonzo Huntington, States Attorney; Silas W. Shermon, Sheriff.

Be it remembered, to wit, that on the 7th day of January, A. D. 1837, there was filed in the office of the clerk of the Circuit Court of Cook County, in the State of Illinois, a certain affidavit, which is in the words and figures following, to wit:—

State of Illinois, County of Cook, ss.

January 7th, 1837.

This day personally appeared before the undersigned, Richard J. Hamilton, Clerk of the Circuit Court within and for the county of and State aforesaid, William Stewart, of the county of Cook, and State of Illinois, who is about to commence a suit against James Herrington, of the county of Kane, in said State, who being first duly sworn, deposes and says, that the said James Herrington is justly indebted to him in the sum of six hundred and sixty-four dollars, lawful money of the United States, on a promissory note, signed by said Herrington, given to one E. T. Clark, or bearer, for goods, wares, and merchandise, which note is now assigned to the said Stewart, the face of said note being for six hundred and three dollars and sixty-four cents, and that the said debt, or the benefit of whatever judgment may be obtained, by the said Stuart, against the said James Herrington, is in danger of being lost, unless the said James Herrington be held to bail agreeably to the laws of this State.

Sworn and subscribed to before me this seventh day of January, A. D. one thousand eight hundred and thirty-seventh.

WM. STUART.

RICHARD J. HAMILTON. [SEAL.]

Which said last mentioned aff't was endorsed on the back in the words and figures following, to wit:—

Filed January 1st, 1837.

RICH'D J. HAMILTON, Clerk.

And afterwards, to wit, on the 7th day of January, A. D. 1837, there issued out of the office of the clerk of the Circuit Court of Cook County, in the State aforesaid, the certain people's writ commonly called capias, which is in the words and figures following, to wit:—

(Capias.)

State of Illinois, Cook County, ss.

The people of the State of Illinois to the sheriff of Kane County, greeting:—

We command you that you take the body of James Herrington, if he shall be found in your county, and him safely keep so that he be and appear before the Circuit Court of said county on the first day of the next term thereof, to be holden at the court-house in the town of Chicago, in said county, on the fourth Monday of May next, to answer unto William Stuart in a plea of trespass in the case on premises, to the damage of the said plaintiff, as he says the sum of one thousand dollars, and have you then and there this writ, with an indorsement thereon in what manner you executed the same.

Witness the Honorable Thomas Ford, Judge of our said court, and

the seal thereof, at Chicago aforesaid, this seventh day of January, in the year of our Lord one thousand eight hundred and thirty-seven.

[SEAL.] RICH'D J. HAMILTON, Clerk.

Which said last mentioned writ was endorsed on the back in the words and figures following, to wit:—

The sheriff of Kane County will please take bail in the sum of six hundred and sixty-four dollars.

RICHARD J. HAMILTON,
Clerk of the Cook County Circuit Court.

"Personally served March 27, A. D. 1837; service 50, return 12½, takes bail 25c.—87½; William M. Card taken as bail.

B. F. FRIDLEY, Sheriff.

Filed March 30th, 1837.

RICH'D J. HAMILTON, Clerk."

And afterwards, to wit, on the 27th day of March, A. D. 1837, there was filed in the office of the clerk of the Circuit Court of Cook County, in the State aforesaid, a certain bail bond, which is in the words and figures following:—

Know all men by these presents, that we, James Herrington and William M. Card, all of Kane County, and State of Illinois, are held and firmly bound unto William Stuart, and to B. F. Fridley, sheriff of Kane County, in the *the* sum of six hundred and sixty-four dollars, lawful money of the United States, to be paid to the said William Stuart, or to B. F. Fridley, sheriff of Kane County, and State of Illinois, or their executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our heirs and executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 27th day of March, A. D. 1837.

The condition of this obligation is such, that whereas William Steward has lately sued out of the county of Cook a certain writ of capias in a plea of trespass on the case against James Herrington, returnable to the usual term of the Circuit Court to be holden at the court-house in the town of Chicago, in said county, on the fourth Monday of May, A. D. 1837. Now, if the said James Herrington shall be and appear at the said court to be holden at the court-house in the town of Chicago, in Cook County, on the fourth Monday of May, A. D. 1837, and answer to the plaintiff in the plea aforesaid, or surrender his body in execution, then this obligation to be void, otherwise to remain in full force.

J. HERRINGTON. [SEAL.]
WM. M. CARD. [SEAL.]

Signed sealed in presence of
B. F. FRIDLEY.

And afterwards, to wit, on the 10th day of May, A. D. 1837, there was filed in the office of the clerk of the Circuit Court of Cook County, in the State aforesaid, a certain declaration, which is in the words and figures following, to wit:—

Cook Circuit Court, May Term, A. D. 1857, State of Illinois.

WILLIAM STUART
vs.
JAMES HERRINGTON. } Assumpsit.

Cook County, ss.

William Stuart, plaintiff in this suit, by Curtiss and Stewart, attorneys, complains of James Herrington, defendant in this suit, commenced by capias, &c. of a plea of trespass on the case upon premises.

For that whereas the said defendant, heretofore, to wit, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and thirty-five, at Chicago, in Cook County aforesaid, made his certain promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay six months after the date thereof, for value received, to one E. T. Clark or bearer, six hundred and three dollars and sixty-four cents, with twelve per centum interest upon said note from the time the same became due till paid, and then and there delivered the said promissory note to the said E. T. Clark, and the said E. T. Clark to whom or to whose order according to the statute in such cases made and provided, the payment of the said sum of money in the said promissory note specified, was to be made after the making of the said promissory note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, at Chicago aforesaid, indorsed the said promissory note, by which said indorsement, he, the said E. T. Clark, then and there appointed and ordered the said sum of money in the said promissory note specified, to be paid to the said plaintiffs, and then and there delivered the said promissory note, so indorsed as aforesaid, to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note. And being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Chicago aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, according to the tenor and effect thereof, and also for that whereas the said defendant heretofore, to wit, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and thirty-five, at Chicago, in Cook County aforesaid, made his certain other

promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay, six months after the date thereof, for value received, to one E. T. Clark, or bearer, six hundred and three dollars and sixty-four cents, and the said defendant, after the making of the said promissory note as aforesaid, and before the indorsements of the said promissory note by the said E. T. Clark, to whose order, according to the statute in such case made and provided, the payment of the said sum of money in the said promissory note specified, was to be made at the bottom or foot of the said promissory note, made his other certain agreement in writing, and thereby then and there agreed to pay twelve per cent. interest upon the said promissory note, from the time the same became due till paid, and then and there delivered the said promissory note to the said E. T. Clark, and the said E. T. Clark, to whom or to whose order, according to the statute in such case made and provided, the payment of the said sum of money in the said promissory note specified, was to be made after the making of the said promissory note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, at Chicago aforesaid, indorsed the said promissory note, by which said indorsement, he, the said E. T. Clark, then and there ordered and appointed the said sum of money in the said promissory note specified, and the twelve per cent. interest in the said agreement specified, to be paid to the said plaintiff, and then and there delivered the said promissory note, so indorsed as aforesaid, to the said plaintiff, by means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note, and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Chicago aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

And also, for that, whereas the said defendant, on the first day of February, in the year of our Lord one thousand eight hundred and thirty-six, at Chicago in the county of Cook aforesaid, was indebted to the said plaintiff in the sum of one thousand dollars, lawful money of the United States of America, for divers goods, wares, and merchandise, by the said plaintiff, before that time sold and delivered to the said defendant, and at his special instance and request; and, being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money when he, the said defendant, should be thereto afterwards requested.

And whereas also, afterwards, to wit, on the same day and year

aforesaid, at the place aforesaid, in consideration that the said plaintiff, at the like request of the said defendant, had, before that time, sold and delivered to the said defendant divers other goods, wares, and merchandise, he, the said defendant, undertook, and then and there faithfully promised the said plaintiff to pay him so much money as the said last mentioned goods, wares, and merchandise, so as aforesaid sold and delivered were reasonably worth at the time of the sale and delivery thereof when he, the said defendant, should be thereto afterwards requested; and the said plaintiff avers that the said last-mentioned goods, wares, and merchandise, so as aforesaid sold and delivered, were reasonably worth at the time of the sale and delivery thereof, other one thousand dollars of the like lawful moneys, whereof the said defendants afterwards, to wit, on the same day and year aforesaid, there had notice.

And whereas, also, the said defendant afterwards, to wit, on the same day and year aforesaid, at the place aforesaid, was indebted to the said plaintiff in the further sum of one thousand dollars, of like lawful money, for money by the said plaintiff before that time lent and advanced to the said defendant, and at his special instance and request.

And for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant at his like request, and for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and being so indebted to the said defendant in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the last-mentioned sum of money when he, the said defendant, should be thereto afterwards requested.

Nevertheless, the said defendant (although often requested, &c.) hath not yet paid the said several sums of money, or any part thereof, to the said plaintiff; but, to pay the same, or any part thereof, to the said plaintiff, he, the said defendant, hath hitherto refused, and still doth refuse, to the damage of the said plaintiff of one thousand dollars; and therefore he brings suit, &c.

CURTISS & STUART, Pl'ff's Att'ys.

(Over.)

Copy of instrument of writing in which this suit is brought.

$603\frac{64}{100}$.

Six months from date, I promise to pay E. T. Clark, or bearer, six hundred and three dollars and sixty-four cents for value received.

(Signed) J. HERRINGTON.

Chicago, July 17th, 1855.

I agree to pay twelve per ct. int. upon the above note, from the time the same is due till paid.

(Signed) J. HERRINGTON.

(Indorsed) Pay the within note to William Stuart.

E. T. CLARK.

And afterwards, to wit, on the same day (the 10th day of May, A. D. 1837), there was filed in the office of the clerk of the Circuit Court of Cook County, in the State aforesaid, a certain promissory note, which is in the words and figures following, to wit:—

$603\frac{64}{100}$.

Six months from date I promise to pay E. T. Clark or bearer six hundred and three dollars and sixty-four cents, for value received.

J. HERRINGTON.

Chicago, July 17th, 1835.

I agree to pay twelve per ct. int. upon the above note, from the time the same is due till paid. J. HERRINGTON.

5 mos., 12 pr. ct., $626 27.

And on the back of the said note last mentioned appears an indorsement which is in the words and figures following, to wit:—

Pay the within note to William Stuart. E. T. CLARK.

And afterwards, to wit, on the 9th day of June, A. D. 1837, it being one of the days of the May term of the said Circuit Court of Cook County, in the State aforesaid, the following among other proceedings were had and entered of record, to wit:—

WILLIAM STUART
vs. } As't.
JAMES HERRINGTON.

This day came the plaintiff, by his attorney, and the defendant having failed to plead, agreeable to a rule herein, it is therefore ordered and considered by the court that the said plaintiff have and recover of the defendant his damages; but because these damages are uncertain and unknown to the court, this action having been brought upon a promissory note for the payment of money only, it is therefore ordered and considered by the court that the clerk assess the same; and the clerk having assessed said damages at the sum of six hundred and forty-six dollars and seventy-two cents, it is therefore ordered and considered by the court that the said plaintiff have and recover of the said defendant the aforesaid sum of six hundred and forty-six dollars and seventy-two cents, his damages, in form aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.

And afterwards, to wit, on the 9th day of June, A. D. 1837, there was filed in the office of the clerk of the Circuit Court of Cook County aforesaid, a certain report of the clerk, which is in the words and figures following, to wit:—

WM. STUART
vs.
J. HERRINGTON.

Amount of principal	$553 64
Interest for 17 mos., at 12 pr. ct. pr. an.	93 08
	$646 72

RICHARD J. HAMILTON, Clerk.
Per W. W. LATIMER, Clerk Dep.

And afterwards, to wit, on the 9th day of September, A. D. 1837, there issued out of the office of the clerk of the Circuit Court of Cook County, in the State aforesaid, the people's certain writ of alias fi. fa. for pl'ff's damages, commonly called execution, which is in the words and figures following, to wit:—

State of Illinois, Cook County, ss.

The people of the State of Illinois to the sheriff of Cook County, greeting:—

We command you, as we have heretofore commanded you, that of the goods and chattels, lands and tenements, of James Herrington [SEAL.] which shall be found in your county, you cause to be made the sum of six hundred and forty-six $\frac{72}{100}$ dollars, which William Stuart hath lately in the Circuit Court of said county recovered against him for his damages, by reason of certain trespasses by him the said Herrington to the said Wm. Stuart lately done; and also the further sum of eight dollars eighty-seven cents, which were adjudged to him for his costs and charges in that behalf expended, whereof the said James Herrington is convicted as appears to us of record, and have that money ready in ninety days from the date hereof, to render to the said Wm. Stuart for his damages and costs aforesaid.

Hereof fail not, and make return of this writ in ninety days from the date hereof with an endorsement thereon as to the manner in which you executed the same.

Witness Richard J. Hamilton, clerk of our said court, and the seal thereof, at Chicago, this ninth day of September, A. D. 1837.

RICH'D J. HAMILTON, Clerk.

And attached to the said last mentioned writ of execution appears a certain copy of clerk's costs in the above entitled case, which said copy of costs is in the words and figures following, to wit:—

WILLIAM STUART
vs. } 1837, May T.
JAMES HERRINGTON.

S'ng and fil'g aff't 18¾, fil'g proc's 6¼, writ 50, doc. 12½, fil. 6¼ 93¾

Fil'g pro. 6¼, pl'ff app. 12½, and att. 12½, ord. for supb. 25, ord. for cl'k to ass. dam. 25,	81¼
Apt. and rept. 25, fil'g 6¼, judg't 25, sat. 25, ord. for ex. 25, ex. 50,	1 56¼
Fil'g 6¼, Doc. 12½, shf. ret. 12½, m'k'g bill of c. and e. 37½, cost 25,	93¾
Clerk's costs,	$4 25
Docket fee,	2 50
Sheriff Kane Co. fees su. 50, bond 25, 1 mile 6¼, rect. 12½,	93¾
Clerk's costs,	$7 68¾
Additional costs, als. ed. 50, fil'g 6¼, doc. 12½, shff. ret. 12½, fee bill 37½	1 18¾
	$8 87½

I do certify that the foregoing is a true copy of my Fee Book.
RICH'D J. HAMILTON, Clerk.

And on the back of said last mentioned writ of execution appears endorsements which are in the words and figures following, to wit:—

"Rec'd Septem. 11th, A. D. 1837, at 4 o'clock P. M."
"No goods or chattels, lands or tenements, to be found."
Geneva, S'r 25th, A. D. 1837.
Return 12½. B. F. FRIDLEY, Sh'ff.
Returned Nov. 30th, 1837.

And afterwards, to wit, on the 23d day of October, A. D. 1854, there was filed in the office of the clerk of the Circuit Court of Cook County, in the State aforesaid, a certain notice of motion to supply loss of execution and proof of service.

In the Cook Circuit Court.

WILLIAM STUART
vs.
JAMES HERRINGTON. } Judg't in asst. at May Term, A. D. 1837.

To Charity Herrington, administratrix of said James Herrington, since deceased.

You are hereby notified that on or about the 19th day of July, 1837, an execution was issued upon said judgment to the sheriff of Kane County, and that the same has been lost or mislaid and cannot now be found in the office of the clerk of said court or elsewhere, and no return thereof appears to have been made in the records of said office, and that a motion will be made to said court on the first day of the next term thereof to be holden at the court-house in the city of Chicago, on the 23d inst., for leave to supply the loss of said execution, or such other order taken so that another execution may be

awarded to be issued upon said judgment under the statute in such case made and provided, which motion will be founded on affidavits then to be filed in said court.

Dated Oct. 11th, 1853. Yours, &c.,
FARNSWORTH & BURGESS,
Att'ys for said plff.

In the Cook Circuit Court.

WILLIAM STUART
vs.
JAMES HERRINGTON.

State of Illinois, county of Cook, ss.

Noah B. Spaulding, sheriff of Kane County, being duly sworn, doth depose and say that he did, on the 13th day of October, 1854, serve upon Charity Herrington, personally, a notice, of which the above is a true copy, by delivering to and leaving with her the same.

N. B. SPAULDING,
Sheriff of Kane County.

Subscribed and sworn to before me this 16th day of October, A. D. 1854. Attest my hand and seal of office.

[SEAL.] CALVIN D. WOLF,
Justice of the Peace.

And afterwards, to wit, on the 23d day of October, A. D. 1854, there was filed in the office of the clerk of the Circuit Court of Cook County aforesaid, a certain "notice of issuing execution and proof of service," which said notice is in the words and figures following, to wit:—

In the Cook Circuit Court.

WILLIAM STUART
vs.
JAMES HERRINGTON.

Assumpsit. Judgment rendered May term, A. D. 1837.

To Charity Herrington, surviving administratrix of said James Herrington, deceased: You are hereby notified that on the ninth day of June, in the year of our Lord one thousand eight hundred and thirty seven, in the Cook Circuit Court, at a term thereof begun and held at the court-house in the city of Chicago, in and for the county of Cook, and State of Illinois, on the fourth Monday of May, in that year, by writ of capias ad respondendum, duly served, and by the judgment and consideration of said court, William Stuart recovered against James Herrington, then in life, since deceased, the sum of six hundred and forty-six dollars and seventy-two cents, which in the said court was awarded to the said William Stuart for his damages which he sustained by reason of the non-performance of certain promises and undertakings made by said James Herrington to the

Fil'g pro. 6¼, pl'ff app. 12½, and att. 12½, ord. for supb. 25, ord. for cl'k to ass. dam. 25,	81¼
Apt. and rept. 25, fil'g 6¼, judg't 25, sat. 25, ord. for ex. 25, ex. 50,	1 56¼
Fil'g 6¼, Doc. 12½, shf. ret. 12½, m'k'g bill of c. and e. 37½, cost 25,	93¾
Clerk's costs,	$4 25
Docket fee,	2 50
Sheriff Kane Co. fees su. 50, bond 25, 1 mile 6¼, rect. 12½,	93¾
Clerk's costs,	$7 68¾
Additional costs, als. ed. 50, fil'g 6¼, doc. 12½, shff. ret. 12½, fee bill 37½	1 18¾
	$8 87½

I do certify that the foregoing is a true copy of my Fee Book.
RICH'D J. HAMILTON, Clerk.

And on the back of said last mentioned writ of execution appears endorsements which are in the words and figures following, to wit:—

"Rec'd Septem. 11th, A. D. 1837, at 4 o'clock P. M."
"No goods or chattels, lands or tenements, to be found."
Geneva, S'r 25th, A. D. 1837.
Return 12½. B. F. FRIDLEY, Sh'ff.
Returned Nov. 30th, 1837.

And afterwards, to wit, on the 23d day of October, A. D. 1854, there was filed in the office of the clerk of the Circuit Court of Cook County, in the State aforesaid, a certain notice of motion to supply loss of execution and proof of service.

In the Cook Circuit Court.

WILLIAM STUART
vs.
JAMES HERRINGTON. } Judg't in asst. at May Term, A. D. 1837.

To Charity Herrington, administratrix of said James Herrington, since deceased.

You are hereby notified that on or about the 19th day of July, 1837, an execution was issued upon said judgment to the sheriff of Kane County, and that the same has been lost or mislaid and cannot now be found in the office of the clerk of said court or elsewhere, and no return thereof appears to have been made in the records of said office, and that a motion will be made to said court on the first day of the next term thereof to be holden at the court-house in the city of Chicago, on the 23d inst., for leave to supply the loss of said execution, or such other order taken so that another execution may be

awarded to be issued upon said judgment under the statute in such case made and provided, which motion will be founded on affidavits then to be filed in said court.

Dated Oct. 11th, 1853. Yours, &c.,
FARNSWORTH & BURGESS,
Att'ys for said plff.

In the Cook Circuit Court.

WILLIAM STUART
vs.
JAMES HERRINGTON.

State of Illinois, county of Cook, ss.

Noah B. Spaulding, sheriff of Kane County, being duly sworn, doth depose and say that he did, on the 13th day of October, 1854, serve upon Charity Herrington, personally, a notice, of which the above is a true copy, by delivering to and leaving with her the same.

N. B. SPAULDING,
Sheriff of Kane County.

Subscribed and sworn to before me this 16th day of October, A. D. 1854. Attest my hand and seal of office.

[SEAL.] CALVIN D. WOLF,
Justice of the Peace.

And afterwards, to wit, on the 23d day of October, A. D. 1854, there was filed in the office of the clerk of the Circuit Court of Cook County aforesaid, a certain "notice of issuing execution and proof of service," which said notice is in the words and figures following, to wit:—

In the Cook Circuit Court.

WILLIAM STUART
vs.
JAMES HERRINGTON.

Assumpsit. Judgment rendered May term, A. D. 1837.

To Charity Herrington, surviving administratrix of said James Herrington, deceased: You are hereby notified that on the ninth day of June, in the year of our Lord one thousand eight hundred and thirty seven, in the Cook Circuit Court, at a term thereof begun and held at the court-house in the city of Chicago, in and for the county of Cook, and State of Illinois, on the fourth Monday of May, in that year, by writ of capias ad respondendum, duly served, and by the judgment and consideration of said court, William Stuart recovered against James Herrington, then in life, since deceased, the sum of six hundred and forty-six dollars and seventy-two cents, which in the said court was awarded to the said William Stuart for his damages which he sustained by reason of the non-performance of certain promises and undertakings made by said James Herrington to the

said William Stuart, as also his costs and charges by him about his suit in that behalf expended, whereof the said James Herrington is convicted, as by the record and proceedings thereof still remaining in the said court manifestly appears; and that execution of the said damages and costs yet remains to be made to him, said William Stuart, execution having been issued on said judgment within one year from the rendition thereof, and afterwards.

And after the giving of the said judgment, the said James Herrington died intestate, after whose death administration of all and singular, the goods and chattels, rights and credits, which come of the said James Herrington, at the time of his death, in due form of law was granted to said Charity Herrington and David Dunham, and that since the granting of said letters, said David Dunham hath departed this life. Now, therefore, on the 15th day of January next, or as soon thereafter as may be, the said William Stuart will sue out execution upon said judgment against the said lands and tenements of said James Herrington, deceased, under section 37 of chapter 57, of the revised statutes.

Dated Oct. 11th, 1854.

Yours, &c.,
WILLIAM STUART,
By his Attorneys,
FARNSWORTH & BURGESS.

In the Cook Circuit Court.

WILLIAM STUART
vs.
JAMES HERRINGTON.

State of Illinois, County of Cook, ss.

Noah B. Spaulding, sheriff of Kane County, being duly sworn, doth depose and say, that he did on the 13th day of October, 1854, personally serve upon Charity Herrington, named above, a notice of which the above is a true copy by delivering the same to her.

N. B. SPAULDING,
Sheriff of Kane County.

Subscribed and sworn to before me, this 16th day of October, A. D. 1854.

Attest my hand and seal office.

[SEAL.]

DALVIN D. WOLF.
Justice of the Peace.

And afterwards, to wit, on the 23d day of October, A. D. 1837, there was filed in the office of the Clerk of the Circuit Court aforesaid, a certain "motion," which is in the words and figures following, to wit:—

In the Cook Circuit Court.

WILLIAM STUART
vs.
JAMES HERRINGTON.

Judg't May 3d, 1857.

Since when said Herrington hath deceased, and Charity Herrington has been appointed administratrix of the estate.

And now comes the said plaintiff William Stuart, by his attorneys, Farnsworth and Burgess, and making suggestion to the court, that since the rendition of said judgment the said James Herrington hath departed this life intestate, and that Charity Herrington hath been appointed administratrix of his estate, moves the court on affidavit filed and to be filed, that an order be entered directing the clerk of this court to enter in the execution book in his office, that the execution issued in the above entitled cause on the 19th day of July, 1837, was not satisfied, and that a further order be entered directing that the plaintiff, if otherwise entitled by law, be at liberty, notwithstanding the said execution not appearing by the records of this court to have been returned, be at liberty to sue out execution on said judgment with like effect, as if said first above named execution had been duly returned and filed on such other order as the said plaintiff may be entitled in the premises.

Dated October 23d, 1854.

FARNSWORTH & BURGESS,
Pl'ff's Att'y.

And the said plaintiff moves the court for time to file further affidavits in support of the within motion.

FARNSWORTH & BURGESS,
Pl'ff's Att'y.

And afterwards, to wit, on the 6th day of November, A. D. 1854, there was filed in the office of the Clerk of the Circuit Court of Cook County aforesaid, a certain affidavit, which is in the words and figures following, to wit:—

In the Circuit Court of Cook County.

WILLIAM STUART
vs.
JAMES HERRINGTON.

On motion to supply loss of execution, &c.

State of New York, County of Broome, ss.

William Stuart, the plaintiff in the above entitled cause, being duly sworn, doth depose and say, that he did on the 9th day of June, A. D. 1837, in said court, recover against said Herrington a judgment for six hundred and forty-six dollars and seventy-two cents,

and costs of suit and the same still remains wholly unsatisfied and unpaid.

And this deponent further states, that as he is informed and verily believes, on or about the 19th day of July, A. D. 1837, an execution was issued on said judgment to the sheriff of Kane County, as appears of record, but he has no memorandum or recollection whatever of such execution, and knows nothing of the issuing of the said execution, of what has become of it, or anything else in relation thereto beyond what appears on the records of the court, and further this deponent saith not. WM. STUART.

State of New York, Broome County.

On this 25th day of October, A. D. 1854, Wm. Stuart personally came before me, and made oath that the within affidavit by him subscribed is true; and I do further certify that I know said Wm. Stuart to be the individual described in, and who executed the same.

WM. R. OSBORNE, Notary Public.

And afterwards, to wit, on the 7th day of December, A. D. 1854, there was filed in the office of the clerk of the Circuit Court of Cook County, in the State aforesaid, a certain affidavit, which is in the words and figures following, to wit:—

In the Cook Circuit Court.

WILLIAM STUART }
vs. }
JAMES HERRINGTON. }

On motion for leave to issue plurias execution.

State of Illinois, County of Cook, ss.

Benjamin F. Fridley, of Kendal County in said State, being duly sworn, doth depose, and say, that he was sheriff of the county of Kane in said State, during the period of time from before the first day of March, 1837, until the first day of December, 1837, and afterwards, that he was personally acquainted with said Herrington during that time, has examined the records in the above entitled cause in said court, and finds there an execution dated the 9th day of September, 1837, issued to said Kane County in said cause, returned by this deponent no property found; this deponent also finds the entery of the issuing of a previous execution entered in the execution book of the date of 19th July, A. D. 1837, on said judgment, and directed to Kane County; this deponent has no recollection of receiving any such execution, and is certain he never made the money or any part thereof required by such execution to be made.

B. F. FRIDLEY.

Subscribed and sworn to before me, this 7th day of Dec., A. D. 1854. L. D. HOORD, Clerk.

And afterwards, to wit, on the 8th day of December, A. D. 1855, it being one of the days of the November term of the Circuit Court of Cook County aforesaid for said year, the following, among other proceedings, were had and entered of record, to wit:—

WILLIAM STUART
vs.
JAMES HERRINGTON. } Motion.

This day comes the said plaintiff by his attorney, whereupon it is ordered by the court that the said defendant show cause, by the coming in of the court on the eighteenth instant, why the said plaintiff's motion now on file should not be granted.

And afterwards, to wit, on the 4th day of January, A. D. 1855, it being as yet of the November term of the said Circuit Court of Cook County for the year A. D. 1854, the following, among other proceedings, were had, and entered of record in said court, to wit:—

WILLIAM STUART
vs.
JAMES HERRINGTON.

Motion for leave to sue out alias execution, when original mislaid.

And now comes the said plaintiff by his attorneys, Farnsworth and Burgess, and no cause having been shown to the contrary as required by the order of the court heretofore made in this cause, and on reading the affidavits of Noah B. Spaulding in the words and figures following: "In the Cook Circuit Court, William Stuart *vs.* James Herrington, judgment in asst. at May term, A. D. 1837. To Charity Herrington, administratrix of said James Herrington, since deceased: You are hereby notified that on or about the 19th day of July, A. D. 1837, an execution was issued upon said judgment to the sheriff of Kane County, and that the same has been lost or mislaid, and cannot now be found in the office of the clerk of said court or elsewhere, and no return thereof appears to have been made in the records of said office, and that a motion will be made to said court on the first day of the next term thereof, to be holden at the court-house in the city of Chicago on the 23d inst., for leave to supply the loss of said execution, or such other order taken so that another execution may be awarded, to be issued upon said judgment under the statute in such case made and provided, which motion will be founded on affidavits then to be filed in said court, dated Oct. 11th, 1853. Yours, &c., BURGESS & FARNSWORTH,
Att'ys for said Pl'ff.

In the Cook Circuit Court, William Stuart *vs.* James Herrington, State of Illinois, county of Cook, Noah B. Spaulding, Sheriff of Kane County, being duly sworn, doth depose and say, that he did on the 13th day of October, 1854, serve upon Charity Herrington, person-

ally, a notice of which the above is a true copy, by delivering to and leaving with her the same. N. B. SPAULDING,
Sheriff of Kane County.

Subscribed and sworn to before me, this 16th day of October, 1854.

Attest my hand and seal of office. CALVIN D. WOLF, [SEAL.]
Justice of the Peace.

In the Cook Circuit Court.

WILLIAM STEWART vs. JAMES HERRINGTON. } Assumpsit.

Judgment rendered May Term, A. D. 1839.

To Charity Herrington, surviving administratrix of said James Herrington, deceased: You are hereby notified that on the ninth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, in the Cook Circuit Court, at a term thereof, begun and holden at the court-house, in the city of Chicago, in and for the county of Cook and State of Illinois, on the fourth Monday of May, in that year, by writ of capias ad respondendum duly served, and by the judgment and consideration of said court, William Stuart recovered against James Herrington, then in life, since deceased, the sum of six hundred and forty-six dollars and seventy-two cents, which in the said court were awarded to the said William Stuart for his damages, which he sustained by reason of the non-performance of certain promises and undertakings, then lately made by said James Herrington to the said William Stuart, as also his costs and charges by him about his suit in that behalf expended, whereof the said James Herrington is convicted as by the record and proceedings thereof still remaining in the said court manifestly appears, and that execution of the said damages and costs yet remain to be made to him, the said William Stuart, execution having been issued on said judgment within one year from the rendition thereof and afterwards, and after the giving of the said judgment the said James Herrington died intestate, after whose death administration of all and singular the goods and chattels, rights and credits, which were of the said James Herrington at the time of his death, in due form of law was granted to said Charity Herrington and David Dunham, and that since the granting of said letters, said David Dunham hath departed this life. Now, therefore, on the fifteenth day of January next, or as soon thereafter as may be, the said William Stewart will sue out execution upon said judgment, against the lands and tenements of said James Herrington, deceased, under section 37, of chapter 37 of the revised statutes, dated Oct. 11th, 1854.

WILLIAM STUART,
By his att'ys, FARNSWORTH & BURGESS.

In the Cook Circuit Court.

WILLIAM STEWART
vs.
JAMES HERRINGTON.

State of Illinois, County of Cook, ss.

Noah B. Spaulding, Sheriff of Kane County, being duly sworn, doth depose and say, that he did on the 13th day of October, 1854, personally serve upon Charity Herrington, named above, a notice of which the above is a true copy, by delivering the same to her.

N. B. SPAULDING,
Sheriff of Kane County.

Subscribed and sworn to before me, this 16th day of October, A. D. 1854. Attest my hand and seal of office.

CALVIN D. WOLF, [SEAL.]
Justice of the Peace.

Showing due service of this motion, and also the affidavits of the said plaintiff, and of Benjamin F. Fridley, which affidavits are all on file herein, and the records of this court in the above entitled cause. It is ordered that the loss of the execution issued in the above entitled cause, on the nineteenth day of July, eighteen hundred and thirty-seven, mentioned in said affidavits, and motion be hereby supplied, and that the said plaintiff when he shall otherwise be entitled be at liberty to issue another execution on the judgment in this cause, with like effect as if said execution, in said affidavits mentioned, had been returned "nulla bona," and that the clerk note on the margin of the execution docket the fact of this order. It being understood that this order no otherwise affects the parties or proceedings in this cause than to supply the loss of said execution, and place upon the records a return of nulla bona thereto.

And afterwards, to wit, on the 16th day of January, A. D. 1855, there was filed in the office of the Clerk of the Circuit Court of Cook County, in the State aforesaid, a certain præcipe for fi. fa., which is in the words and figures following, to wit:—

Cook Circuit Court.

WM. STUART
vs.
JAMES HERRINGTON.

Clerk issue fi. fa. vs. lands and tenements, which were of said defendant at the time of his decease.

January 15th, 1855. FARNSWORTH & BURGESS,
For Plaintiff.

And afterwards, to wit, on the 16th day of January, A. D. 1855, there issued out of the office of the Clerk of the Circuit Court of Cook

County, in the State aforesaid, a certain people's plurias writ of fi. fa. plaintiff's damages, commonly called execution, which is in the words and figures following, to wit:—

State of Illinois, County of Cook, ss.

The people of the State of Illinois to the sheriff of said county, greeting:—

We command you, as we have before commanded, that of the lands and tenements which were of James Herrington, deceased, at the time of his death, defendant in your county, you cause to be made the sum of six hundred and forty-six dollars and seventy-two cents, which William Stuart, plaintiff, lately in the Cook County Circuit Court of said county, at a term thereof begun and holden at Chicago, in said county, on the Monday of May, A.D. 1837, recovered against the said defendant, and which, by the said court, was adjudged to the said plaintiff for his damages, and also the further sum of twelve dollars and two ½ cents, which were adjudged to the said plaintiff for his costs and charges in that behalf expended, whereof the said defendant was convicted, as appears to us of record, and have you there moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make return of this writ with an indorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness, Louis D. Hoord, Clerk of our said court, and the seal thereof, at Chicago, in said county, this sixteenth day of January, A. D. 1855. L. D. HOORD, Clerk.

[SEAL.]

And on the back of said last-mentioned writ appear indorsements which are in the words and figures following, to wit:—

The sheriff will collect interest from July 7th, 1837.
Rec'd at 4 o'clock P. M., 17th Jan., 1855. L. D. HOORD, Cl'k.

And attached to the said last-mentioned writ is the sheriff's return of the same, which is in the words and figures following, to wit:—

By virtue of the annexed writ of execution, No. , I did on the 17th day of January, 1855, levy upon all that part of the north-west fractional (¼) quarter section number twenty-two (22), in township number thirty-nine (39) of range number fourteen east of the third p. m., bounded north by that part of said fractional quarter section conveyed by James Herrington and his wife to John S. Wright by deed dated the 3d day of December, 1834, and recorded in the Recorder's office, of said county, in book B of deeds on page 295, and on the west by the west line of the said fractional (¼) quarter section, and on the south by land conveyed by James Herrington and wife to Truman Wright by deed dated the 3d of June, 1835, recorded in said office in book H of deed on page 118, and on the

east by Lake Michigan, and also the northwest fractional (¼) quarter of section number (22) twenty-two aforesaid.

JAMES ANDREWS, Sheriff.
By F. S. BUCKLEY, Deputy.

And on the 6th day of March, 1855, between the hours of nine in the morning and the setting of the sun of the same day, at the north door of the court-house in Chicago, in Cook County, the time and place of sale having been duly advertised according to law, I did sell, at public vendue, to the highest and best bidder at said sale, the property levied upon, as aforesaid, as follows: All that part of the northwest fractional quarter (¼) of section number twenty-two (22) in township number thirty-nine (39) north of range No. (14) fourteen east of third principal meridian, bounded north by that part of said fractional quarter section conveyed by James Herrington and his wife to John S. Wright by deed dated the third day of December, 1834, recorded in the Recorder's office of said county, in book 13 of deeds on page 295; and on the west by the west line of said fractional quarter section, and on the south by land conveyed by James Herrington and his wife to Truman Wright by deed dated the 3d of June, 1835, recorded in said office in book H of deeds on page 118, and on the east by State street to William Adams, for the sum of three hundred and forty-four dollars and sixty cents; said sum being the highest and best bid offered for said parcel of land. And also all that other part of said fractional quarter section bounded north by that part thereof conveyed by James Herrington and his wife to John S. Wright by said deed dated the third day of December, A. D. 1834, and on the west by State street, and on the south by land conveyed by James Herrington and his wife to Truman Wright by said deed dated the third day of June, A. D. 1837, and on the east by Wabash avenue, to William H. Adams, for the sum of three hundred and forty-four dollars and sixty cents; said sum being the highest and best bid offered for said last-mentioned parcel of land. And also all that other part of said fractional quarter section bounded north by that part thereof conveyed by James Herrington and his wife to John S. Wright by said deed dated the third of December, A. D. 1834, and on the west by Wabash avenue, and on the south by land conveyed by James Herrington and his wife to Truman Wright by said deed dated the 3d of June, A. D. 1835, and on the east by Michigan avenue, to William H. Adams, for the sum of three hundred and forty-four dollars and sixty cents; said sum being the highest and best bid offered for said last-mentioned parcel of land. And also all that other part of said fractional quarter of said section bounded north by that part thereof conveyed by James Herrington and his wife to John S. Wright by said deed dated the third day of December, 1834, and on the west by Michigan avenue, and on the south by land conveyed by James Herrington and wife to Truman Wright by said deed dated the 3d

day of June, A. D. 1835, and on the east by Lake Michigan, to William H. Adams, for the sum of three hundred and forty-four dollars and sixty-two cents; said sum being the highest and best bid offered for said last-named parcel of land.

And after deducting my fees, etc., on execution $25 51, and the amount of fee bills $3 15 accompanying execution, I have paid the balance to plaintiff's attorney, 1352 91, $1378 42, and return the said annexed execution satisfied

JAMES ANDREW, Sheriff.
By F. S. BUCKLEY, Deputy.

And said last mentioned writ of execution was further endorsed as follows, to wit:—

"Received from the sheriff Andrew, the amount bid in this case, less his costs and the sheriff's fees.

WM. STEWART,
By FARNSWORTH & BURGESS,
His Att'ys.

Filed December 20th, 1856.

WM. L. CHURCH, Clerk.

State of Illinois, Cook County, ss.

I, William L. Church, clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify that the above and foregoing transcript is a true, perfect, and complete copy of the files as well as the orders entered of record in said court, and of the whole thereof as appears to us of record in a certain cause lately pending in said court, wherein Wm. Stuart was plaintiff, and James Herrington was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of our said court this 7th day of July, A. D. 1857.

[SEAL.] WM. L. CHURCH, Clerk.

Opened Jan'y 18th, 1858, for Mr. Burgess.
WM. H. BRADLEY, Clerk.

The copy of entry in the execution *in the execution* docket of said Cook County Circuit Court under the seal of that court.

No.	Parties' Names.	Date.	When Returnable.	Am't of Judgment.	Am't Costs.	Folio of Record.	Satisfaction of Judgment.	Sheriff's Return.	When and to whom Delivered.
982	William Stuart vs. James Herrington	1837 July 19	1837 Oct. 19	646 72	7 63½	13 358	See record on p. 174, as to return of this execution, of date Jan'y 3d, 1855.		Sent to sheriff of Kane Co. July 19th, 1857.

State of Illinois, Cook County.

I, William L. Church, clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify that the above and foregoing transcript is a true and perfect copy taken from execution docket "A" in this office of the clerk of the Circuit Court aforesaid.

In witness whereof I have hereunto set my hand and affixed the seal of our said court this 16th day of June, A. D. 1858.

[SEAL.] WM. L. CHURCH, Clerk.

The Assignment of Certificate of Sale from William H. Adams to Julius C. Smith.

Know all men by these presents that I, William H. Adams, for a valuable consideration to me paid by Julius C. Smith, have sold, assigned, and transferred, and do hereby sell, assign, and transfer to said Smith a certain certificate of the sheriff of Cook County of a sale made by him to me on the sixth day of March, A. D. 1855, under the execution dated the 17th day of January, 1855, issued to him from the Cook County Circuit Court, in favor of William Stuart, and against the lands and tenements which were of James Herrington, deceased, at the time of his death, of those certain lands and premises, being part of the northwest fractional quarter of section number twenty-two, in township number thirty-nine north, of range number fourteen east of the third principal meridian, and therein particularly bounded and described, and do release and convey to him said lands, and authorize him to receive a deed in his own name and to his own use from the said sheriff therefor, by virtue of said certificate of sale.

Witness my hand and seal this ninth day of October, A. D. 1856.

WM. H. ADAMS. [SEAL.]

State of Illinois, Cook County, ss.

I, James W. Musson, Not. Pub. in and for said county, in the State aforesaid, do hereby certify that William H. Adams, who is personally known by me to be the same person whose name is subscribed to the annexed instrument, appeared before me this day in person, and acknowledged that he had signed, sealed, and delivered the said instrument of writing, as his free act and deed, for the uses and purposes therein expressed.

Given under my hand and notarial seal this ninth day of October, A. D. 1856.

[SEAL.] JAS. W. MUSSON, Notary Public.

Endorsed: State of Illinois, Cook County. No. 76,431.

Filed for record 10 Oct., 1856. Filed in book of D, 119, page 348. L. D. HOORD, Cl'k.

The Deed from William Stuart and Wife to Walter Laflin.

Know all men by these presents that we, William Stuart and

Eliza G. Stuart, his wife, of Binghampton, New York, in consideration of one thousand six hundred dollars to us paid, do, by these presents, grant, bargain, sell, and convey to Walter Laflin, of Pittsfield, and State of Massachusetts, all the following described lands, situate in the city of Chicago, county of Cook, and State of Illinois, and described as follows, viz:—

All that part of the northwest fractional quarter of section number twenty-two (22), in township number thirty-nine (39) north, of range number fourteen (14) east of the third principal meridian, bounded north by that part of said fractional quarter section conveyed by James Herrington and his wife to John S. Wright, by deed dated the third day of December, A. D. 1834, and recorded in the recorder's office of Cook County, in the State of Illinois, in book B of deeds, on page 295; and on the west by the west line of said fractional quarter section; and on the south by the lands conveyed by James Herrington and his wife to Truman Wright, by deed dated the third day of June, A. D. 1835, and recorded in said office in book H of deeds, on page 118; and on the east line by the east line of said fractional quarter section, being the shore of Lake Michigan: To have and to hold the same, with the privileges and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, to the above-named grantee, his heirs and assigns, forever.

In witness whereof we have hereunto set our hands and seals this first day of October, A. D. 1856.

The words, and do warrant the same to be free from all incumbrances whatsoever, struck out before signing.

WM. STUART, [SEAL.]
ELIZA G. STUART. [SEAL.]

Signed, sealed, and delivered in presence of

State of New York, Broome County, ss.

I, William R. Osborne, Notary Public in and for the said county and State aforesaid, do hereby certify that Wm. Stuart and Eliza G., his wife, who are personally known to me as the real persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth; and the said Eliza G., wife of the said Wm. Stuart, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and explained to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she did not wish to retract the same.

Given under my hand this eighth day of December, in the year of our Lord one thousand eight hundred and fifty-six.

[SEAL.] WM. R. OSBORNE, [L. S.]
Notary Public.

Endorsed: State of Illinois, County of Cook. 79,686.
Filed for record, 29th December, 1856, and recorded in book of deeds 123, page 358.

WM. L. CHURCH, Cl'k.

The deed from Julius C. Smith, and wife, to Walter Laflin, made in the words and figures following, to wit:—

Quit Claim Deed.

This indenture, made this twentieth day of November, in the year of our Lord one thousand eight hundred and fifty-six (A. D. 1856), between Julius C. Smith, of Lake County, Illinois, and Eliza his wife, party of the first part, and Walter Laflin, of Pittsfield in the State of Massachusetts, of the second part.

Witnesseth, that the said party of the first part, in consideration of thirty thousand dollars ($30,000) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, by these presents, does release, alien, convey, and quit claim, unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, claim, and demand, which the said party of the first part has in and to the following described piece of land, situated in the county of Cook, and State of Illinois, described as follows, to wit:—

All that part of the northwest fractional quarter of section number twenty-two (22), in township number thirty-nine north, of range number fourteen 14 east of the third principal meridian, bounded north, by that part of said fractional quarter section conveyed by James Herrington and his wife to John S. Wright, by deed dated the third day of December, A. D. 1834, and recorded in the recorder's office of said county, in book B of deeds, on page 295, and on the west by the west line of said fractional quarter section, and on the south by land conveyed by James Herrington and wife to Truman G. Wright, by deed dated the third day of June, 1835, recorded in said office in book H of deeds, on page 118, and on the east by the east line of said fractional quarter section, being the shore of Lake Michigan.

To have and to hold the same with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatever of the said part of the first part, either in law or in equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of *of* the first part, hereunto set his hand and *and* seal the day and year first above written.

JULIUS C. SMITH, [SEAL.]
ELIZA SMITH. [SEAL.]

Signed, sealed and delivered in presence of.

State of Illinois, Lake County, ss.

I, John H. Cotes, a notary public in and for the town of Waukegan, in said county, in the State aforesaid, do hereby certify that Julius C. Smith, and Eliza Smith, his wife, who are personally known to me as the real persons whose names are subscribed to the within deed, appeared before me this day in person and acknowledged that they executed and delivered the said deed, as their free and voluntary act, for the uses and purposes therein set forth; and the said Eliza Smith, wife of the said Julius C. Smith, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-six, A. D. 1856.

[SEAL.] JOHN H. COTES, Notary Public.

Endorsed: State of Illinois, County of Cook, 79,685.

This instrument was filed for record the 29th day of December, at the hour of o'clock, 1856, and duly recorded in book 123, of deeds, page 357. WM. L. CHURCH, Clerk.

The transcript of the record from the Supreme Court of the State of Illinois of the proceedings and judgment in that court in a cause wherein Matthew Laflin was plaintiff, and A. M. Herrington and others were defendants, reads in the words and figures following, to wit:—

At a Supreme Court begun and held at Ottawa on the eleventh day of June, in the year of our Lord one thousand eight hundred and fifty-five, within and for the third grand division of the State of Illinois.

Present: The Hon. Walter B. Scotes, chief justice.
" John D. Caton, associate justice.
" O. C. Skinner, "

Be it remembered, that heretofore, to wit, on the twelfth day of June, in the year of our Lord one thousand eight hundred and fifty-five, Matthew Laflin filed in the office of the clerk of said Supreme Court a transcript of a certain plea which was had in the Cook County Court of Common Pleas of Cook County, in the State

of Illinois, which said transcript is in the words and figures following, to wit:—

State of Illinois, County of Cook, ss.

Pleas before the Honorable John M. Wilson, judge of the Cook County Court of Common Pleas, within and for the county of Cook and State of Illinois, at a regular term of said Cook County Court of Common Pleas, begun and held at the court-house in the city of Chicago, in said county and State, on the first Monday, being the fifth day of February, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth.

Present: The Hon. John M. Wilson, judge.
Daniel McIlroy, prosecuting attorney.
James Andrew, sheriff.

Attest: WALTER KIMBALL, Clerk.

Be it remembered, that heretofore, to wit, on the thirteenth day of February, in the year of our Lord one thousand eight hundred and fifty-four, Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, and Jane Herrington, of lawful age, and Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, infants under the age of twenty-one years, by Charity Herrington, their next friend, by Collins and Goodrich, their attorneys, filed in the office of the clerk of the Cook County Court of Common Pleas, a declaration against Matthew Laflin, of a plea of trespass and ejectment, which said declaration is in the words and figures as follows, to wit:—

State of Illinois, Cook County, ss. Cook County Court of Common Pleas.

Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, and Jane Herrington, of lawful age, and Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, infants under the age of twenty-one years, by Charity Herrington, their next friend, by Collins and Goodrich, their attorneys, complain of Matthew Laflin, of a plea of trespass and ejectment.

For that the said plaintiffs heretofore, to wit, on the first day of May, A. D. eighteen hundred and fifty-three, in the county of Cook aforesaid, were possessed of the following described lands and premises, to wit: All but the undivided two-elevenths of one-tenth of that part of the northwest fractional quarter of section twenty-two (22), in township thirty-nine (39) north, of range fourteen east of the third principal meridian, bounded north by that part of said quarter section conveyed by James Herrington and Charity, his wife, to John S. Wright, by deed bearing date December third, eighteen hundred and thirty-four, and recorded in book "B," at page 295, of

the records of the recorder of Cook County, west by the west line of said quarter section, south by land conveyed by said James Herrington and Charity, his wife, to Truman G. Wright, by deed bearing date June third, eighteen hundred and thirty-five, and recorded in the office of the recorder of Cook County, in book "H," of deeds, at page one hundred and eighteen, and on the east by Lake Michigan, to which said land and premises said plaintiffs claim title in fee simple, and being so possessed thereof, the said Matthew Laflin afterwards, to wit, on the second day of May, A. D. eighteen hundred and fifty-three, in the county aforesaid, entered into the possession of said premises, and from thence hitherto unlawfully withholds from the said plaintiffs possession thereof.

And also for that whereas the said plaintiffs heretofore, to wit, on the first day of May, eighteen hundred and fifty-three, in Cook County aforesaid, were possessed of the following other described lands and premises, to wit, nine-tenths and nine-elevenths of one-tenth of that part of the northwest fractional quarter section twenty-two (22), in township thirty-nine (39) north, of range fourteen east of the third principal meridian, bounded north by that part of said quarter section, conveyed by James Herrington and Charity, his wife, to John S. Wright, by deed bearing date December third, eighteen hundred and thirty-four, and recorded in book "B" at page 295, of the records of the recorder of Cook County, west of the west line of said quarter section, south by land conveyed by said James Herrington, and Charity, his wife, to Truman S. Wright, by deed bearing date June third, eighteen hundred and thirty-five, and recorded in the office of the recorder of Cook County, in book "H" of deeds, at page one hundred and eighteen, and on the east by Lake Michigan, to which said land and premises said plaintiffs claim title in fee simple, and being so possessed thereof, the said Matthew Laflin afterwards, to wit, on the second day of May, A. D. eighteen hundred and fifty-three, in the county aforesaid, entered into the possession of said premises, and from thence hitherto unlawfully withholds from the said plaintiff the possession thereof to their damage of one thousand dollars, and thereupon they bring suit, &c.

COLLINS & GOODRICH,
Pl'ffs' Att'ys.

To Matthew Laflin, Esq., Sir: You will please take notice that a declaration in ejectment, of which the foregoing is a copy, will be filed on the eighth day of the present term of the Cook County Court of Common Pleas, now in session at the court-house in the city of Chicago, in the county of Cook aforesaid, which said eighth day of said term will be on the thirteenth day of February instant, with the clerk of said court, and upon the filing thereof a rule will be entered in said court requiring you to appear and plead to said declaration within twenty days after the entry of said rule, and that if you neglect so to appear and plead, a judgment will be entered

by default against you, and said plaintiff will recover possession of said premises in said declaration described.

Feb. 9th, 1854. COLLINS & GOODRICH.

State of Illinois, Cook County, ss.

H. E. Seeley being first duly sworn, saith that on Thursday, the ninth day of February, A. D. 1854, he delivered to the defendant within named, Matthew Laflin, a copy of the within declaration and notice. H. E. SEELEY.

Subscribed and sworn to before me, Walter Kimball, Clerk of the Cook County Court of *of* Common Pleas, this 11th day of February, A. D. 1854. W. KIMBALL, Clerk.

And afterwards, to wit, on the thirteenth day of February, being one of the days of the February Term of said court, in the year eighteen hundred and fifty-four, the following proceedings were had in said cause and entered of record: —

AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, and JANE HERRINGTON, of lawful age, and THADDEUS HERRINGTON, MARY HERRINGTON, MARGARET HERRINGTON, and CHARLES HERRINGTON, infants under the age of twenty-one years, by CHARITY HERRINGTON, their next friend, vs. MATTHEW LAFLIN.	Ejectment.

And now at this day come the said plaintiffs, by Collins and Goodrich, their attorneys, and file herein their declaration and notice in ejectment, and it appearing to the court that the said defendant has been duly served with a copy of the declaration of the said plaintiffs against him and notice thereto attached, according to the statute in such case made and provided. On motion of said plaintiffs' attorneys, it is ordered that the said defendant, Matthew Laflin, plead to said plaintiffs' declaration filed in this cause, in twenty days, or in default thereof, that judgment by default be entered against him for want of a plea.

And thereafter, to wit, on the twenty-second day of February, A. D. one thousand eight hundred and fifty-four, the said defendant, Matthew Laflin, by Arnold, Larned, and Lay, his attorneys, filed his plea in the office of the clerk of said court, which plea is in the words and figures following, to wit:—

Cook County Court of Common Pleas.

MATTHEW LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, and JANE HERRINGTON, and THADDEUS HERRINGTON, MARY HERRINGTON, MARGARET HERRINGTON, and CHARLES HERRINGTON, who appeared by CHARITY HERRINGTON, their next friend, &c.

And the said Matthew Laflin, by Arnold, Larned, and Lay, his attorneys, comes and says that he is not guilty of unlawfully withholding the premises claimed by the said plaintiffs as alleged in the said declaration of the said plaintiffs, and of this he, the said Matthew Laflin, puts himself upon the country.

ARNOLD, LARNED, and LAY, Att'ys for Deft.

And the plaintiffs doth the like.

COLLINS and GOODRICH, Pl'ffs' Att'ys.

And afterwards, to wit, on the sixteenth day of November, A. D. one thousand eight hundred and fifty-four, being one of the days of the November vacation term of said court, the following proceedings were had in said cause, and entered of record:—

AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, and JANE HERRINGTON, of lawful age, and THADDEUS HERRINGTON, MARY HERRINGTON, MARGARET HERRINGTON, and CHARLES HERRINGTON, by CHARITY HERRINGTON, their next friend,
vs.
MATTHEW LAFLIN.
} Ejectment.

And now upon this day come the said plaintiffs by Grant Goodrich, their attorney, and the defendant by Arnold, Larned, and Lay, his attorneys, also comes, and issue having joined herein by agreement of said parties, this cause is submitted to the court for trial, without the intervention of a jury. And the court, after hearing the evidence adduce allegations and proofs, arguments of counsel, and being now fully advised in the premises, finds the issue for the plaintiffs.

Therefore it is considered that the said plaintiffs to have and recover of the said defendant the premises described in their said declaration filed in this cause as follows, to wit, all but the undivided two-elevenths of one-tenth of that part of the northwest fractional quarter of section twenty-two (22), in township thirty-nine (39) north, of range fourteen east of the third principal meridian, bounded north by that part of said quarter section conveyed by James Herrington and Charity Herrington, his wife, to John S. Wright, by deed bearing date December third, eighteen hundred and thirty-four, and recorded in Book "B" at page 295 of the records of the re-

corder of Cook County, west by the west line of said quarter section, south by land conveyed by said James Herrington and Charity Herrington, his wife, to Truman G. Wright, by deed bearing date June third, eighteen hundred and thirty-five, and recorded in the office of the recorder of Cook County, in Book "H" of deeds, at page one hundred and eighteen, and on the east by Lake Michigan, and also the following other described lands and premises, to wit, nine-tenths and nine-elevenths of one-tenth of that part of the northwest fractional quarter of section twenty-two (22), in township thirty-nine (39) north, of range fourteen (14) east of the third principal meridian, bounded north by that part of said quarter section conveyed by James Herrington and Charity Herrington, his wife, to John S. Wright, by deed bearing date December third, eighteen hundred and thirty-four, and recorded in Book "B," at page 295 of the records of the recorder of Cook County, west by the west line of said quarter section south, by and conveyed by said James Herrington and Charity, his wife, to Truman S. Wright, by deed bearing date June third, eighteen hundred and thirty-five, and recorded in the office of the recorder of Cook County, in Book "H" of deeds, at page one hundred and eighteen, and on the east by Lake Michigan, and that said plaintiffs have a writ of possession therefor, and that they also have and recover of the said defendant their costs by them about this suit in this behalf expended, and have execution therefor.

And thereupon the said defendant enters his motion herein for a new trial in this cause, which said motion after being heard by the court is overruled, and thereupon said defendant enters a motion herein for a new trial in this cause, on payment of costs under the statute in such case made and provided, which said motion is thereupon sustained and allowed by the court.

And thereafter, to wit, on the second day of March, A. D. one thousand eight hundred and fifty-five, there was filed in the office of the clerk of said court, certain stipulations in said cause, which said stipulations are in the words and figures as follows, to wit:—

Augustus M. Herrington, born July 27, 1820.
Nathan Herrington, born May 27, 1822.
James Herrington, born June 26, 1824.
Fanny Herrington, born Nov. 12, 1826.
Alfred Herrrington, born Feb'y 21, 1829.
Jane Herrington, born Oct. 30, 1830.
Thaddeus Herrington, born Dec. 5, 1832.
Mary Herrington, born Jan. 11, 1835.
Margaret Herrington, born Nov. 3, 1836.
Charles Herrington, born April 7, 1839.

The above statement of the time of birth of the above named persons is admitted, and that they are the living children of James Herrington, dec'd, except that Fanny died as in the other stipulation set forth.

G. GOODRICH,
For heirs of J. Herrington, dec'd.

March 2, '55.

In Cook Common Pleas.

AUGUSTUS M. HERRINGTON, and others
vs.
MATTHEW LAFLIN. } Ejectment.

It is hereby stipulated by the counsel and parties to this suit, that on the trial thereof, the following facts shall be admitted as true, to wit:—

1st. That James Herrington died in March, 1839.

2d. That at the time of his death, he left him surviving the plaintiffs and one Fanny Herrington, as his sole and only children and at law; and that the said Fanny departed this life three days after the decease of her father, without issue or other heirs at law than the plaintiffs, and their mother, Charity Herrington, who was the widow of said James Herrington, and who survived both, and who still lives.

3d. That the defendant claimed title to the premises in controversy at the time this suit was brought.

ARNOLD & BECKWITH, Att'ys for Deft.
GOODRICH & MANNIENE, Pl'ffs' Att'ys.

Chicago, March 2d, 1855.

And afterwards, to wit, on the fifth day of March, being one of the days of the February Term of said court, eighteen hundred and fifty-five, the following proceedings were had in said cause, and entered of record.

AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, and JANE HERRINGTON, of lawful age, and THADDEUS HERRINGTON, MARY HERRINGTON, MARGARET HERRINGTON, and CHARLES HERRINGTON, infants under twenty-one years, by CHARITY HERRINGTON, their next friend,
vs.
MATTHEW LAFLIN. } Ejectment.

And now at this day come the plaintiffs, by Goodrich & Manniene, their attorneys, and the said defendant, by Arnold, Larned & Lay, his attorneys, also comes and by agreement of said parties this cause is submitted to the court for trial, without the intervention of a jury, and the court, after hearing the testimony adduced and argument of council, not being fully advised in the premises, takes the matter under advisement.

And thereafter, to wit, on the twenty-ninth day of March, being another of the days of the said February term of said court, one thousand eight hundred fifty-five, the following proceedings were had in said cause, and entered of record:—

AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, and JANE HERRINGTON, of lawful age, and THADDEUS HERRINGTON, MARY HERRINGTON, MARGARET HERRINGTON, and CHARLES HERRINGTON, infants under the age of twenty-one years, by CHARITY HERRINGTON, their next friend,
vs.
MATTHEW LAFLIN. } Ejectment.

And now again at this day come the said parties by the respective attorneys, and the court to whom this cause was heretofore submitted without the intervention of a jury, a jury having been waived by agreement of the parties, and after arguments of counsel, being fully advised in the premises, finds that the said plaintiffs have established in themselves, by the testimony in the case, an estate in fee simple in and to the undivided nine-tenths and nine-elevenths of one-tenth of the premises described in their declaration in this cause, that is to say, in that part of the northwest fractional quarter of section twenty-two (22), in township thirty-nine (39) north, of range fourteen (14) east of the third principal meridian, bounded north by that part of said quarter section conveyed by James Herrington and Charity, his wife, to John S. Wright, by deed bearing date December third, eighteen hundred and thirty-four, and recorded in book "B" at page two hundred and ninety-five (295) of the records of *the records of* Cook County, west by the west line of said quarter section, south by land conveyed by said James Herrington and Charity, his wife, to Truman G. Wright, by deed bearing date June third, eighteen hundred and thirty-five, and recorded in the office of the recorder of Cook County in book "H" of deeds at page one hundred and eighteen, and on the east by Lake Michigan, and thereupon the defendant moves for a new trial, which is overruled by the court, to which overruling of said motion the said defendant by his counsel excepts.

It is therefore ordered and adjudged by the court that the said plaintiffs recover of said defendant the possession of the undivided nine-tenths and nine-elevenths of one-tenth of the said premises, and that they have a writ of restitution therefor according to the statute in such case made and provided, and further, that the said plaintiffs recover of said defendant their costs about their suit in this behalf expended, and that they have execution therefor.

And thereupon the said defendant prays an appeal to the Supreme Court of the State of Illinois, which is allowed by the court on his filing appeal bond in the sum of five hundred dollars with William R. Loomis as security, and thirty days' time is given said defendant from this day to prepare and file his bill of exceptions herein.

And thereafter, to wit, on the thirty first day of March, A. D. one thousand eight hundred and fifty-five, defendant accordingly filed in

the office of the clerk of said court his appeal bond, which said bond in words and figures following to wit:—

Know all men by these presents, that we, Matthew Laflin and William R. Loomis, are held and firmly bound unto Augustus M. Herrington, Nathan P. Herrington, James Herrington, Jane Herrington, Alfred Herrington, Thaddeus Herrington, and Charles Herrington, in the penal sum of five hundred dollars, good and lawful money of the United States, to be paid to the said obligees, their heirs, executors, administrators, and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, and every of them, firmly by these presents.

Sealed with our seals, dated the 31st day of March, A. D. 1855.

The condition of the above obligation is such that whereas the above obligees did, at a time of the Cook County Court of Common Pleas, held in and for said county on the first Monday of March, A. D. 1855, recover a judgment against the above bounden Matthew Laflin in a suit in said court, wherein the above named obligees were plaintiffs, and said Matthew Laflin was defendant, for the possession of lands described as the undivided nine-tenths and nine-elevenths of one-tenth of that part of the northwest fractional quarter section twenty-two (22), town. thirty-nine (39) north, of range fourteen east of third principal meridian, bounded north by that part of said quarter section, conveyed by James Herrington and Charity his wife to Truman G. Wright, by deed bearing date December 3d, A. D. 1834, and recorded in book "B" at page 295 of the records of the recorder of said county, west by the west line of said quarter section, north by land conveyed by said James Herrington and Charity his wife to Truman G. Wright by deed bearing date June 3d, 1835, and recorded in the office of the recorder of Cook County in book "H" of deeds at page 118, and on the east by Lake Michigan, as well also for costs of said suit, from which said judgment the said Matthew Laflin has taken an appeal to the Supreme Court of the State of Illinois.

Now if the said Matthew Laflin shall duly prosecute his said appeal, and shall pay, or cause to be paid, all judgments, costs, interests, and damages, which may be awarded against him in case said judgment so appealed from shall be affirmed, then this obligation to be void, otherwise of full force and virtue.

MATTHEW LAFLIN, [SEAL.]
WM. R. LOOMIS. [SEAL.]

And thereafter, to wit, on the third day of May, one thousand eight hundred and fifty-five, there was filed in the office of the clerk of said court a certain other stipulation in said cause, which is in the words and figures following, to wit:—

Com. Pleas.

A. M. HERRINGTON
vs.
MATTHEW LAFLIN.

It is hereby agreed that the time for signing and filing bill of exceptions shall be extended to the fourth day of May inst.

GOODRICH & MANNIENE, for Plt'ffs.
ARNOLD & BECKWITH, for Def'ts.

Chicago, April 26, 1856.

And thereafter, to wit, on the fourth day of May, A. D. eighteen hundred and fifty-five, the said defendant, by his said attorneys, filed in the office of the clerk of said court his bill of exceptions, in words and figures as follows, to wit:—

Cook County Court of Common Pleas.

MATTHEW LAFLIN
vs.
JAMES HERRINGTON et al.

Be it remembered, that on the trial of this cause, the plaintiffs, to make out the case on their part, introduced a patent from the United States to James Herrington for the northwest fractional ¼ of section 22, in town. 39 north, of range 14, in these words, to wit:—

Pre-emption Claim, No. 1240.

The United States of America. To all to whom these presents shall come, greeting:—

Whereas, James Herrington, junior, of Cook County, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Danville, whereby it appears that full payment had been made by the said James Herrington, junior, according to the provisions of the act of Congress of the 24th of April, 1820, entitled an "act" making further provision for the sale of the public lands for the northwest fractional quarter of section twenty-two, in township thirty-nine north, of range fourteen east, in the district of lands subject to sale, at Danville, Illinois, containing one hundred and six acres and ninety-six hundredths of an acre, according to the official plan of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said James Herrington, junior.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said James Herrington, junior, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and

appurtenances, of whatsoever nature thereunto belonging, unto the said James Herrington, junior, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the first day of November, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

By the President.

MARTIN VAN BUREN.
By M. VAN BUREN, Pr. Sec'y.
H. M. GARLAND,
Recorder of the General Land Office.

Also stipulation signed by counsel on both sides in the words following, to wit:—

In Cook Com. Pleas.

AUGUSTUS M. HERRINGTON and others
vs.
MATTHEW LAFLIN. } Ejectment.

It is hereby stipulated by the counsel and parties to this suit, that on the trial thereof the following facts shall be admitted as true, to wit:—

1st. That James Herrington died in March, 1839.

2d. That, at the time of his death, he left him surviving the plaintiffs and one Fanny Herrington as his sole and only children and heirs at law, and that the said Fanny departed this life three days after the decease of her father, without issue or other heirs at law than the plaintiffs and their mother, Charity Herrington, and was the widow of said James Herrington, and who survived both; and who still lives.

3d. That the defendant claimed title to the premises in controversy at the time this suit was brought.

ARNOLD & BECKWITH, Att'ys for Def't.
GOODRICH & MANNIENE, Pl'ffs' Att'ys.

And then rested their case after introducing in evidence the following deed from Charity Herrington to Giles Spring, as follows:—

(Charity Herrington to Giles Spring.)

The plaintiff introduced and read in evidence the deed of Charity Herrington to Giles Spring in these words:—

Know all men by these presents that I, Mrs. C. Herrington, of the county of Kane, and State of Illinois, for and in consideration of the sum of ten dollars, to me in hand paid by Giles Spring, the

receipt whereof is hereby acknowledged, do give, grant, bargain, and sell unto the said Giles Spring, his heirs and assigns, forever, all my right, title, and interest in and to the following described piece or parcel of property lying and being in the county of Cook, and State of Illinois, and bound and described as follows, to wit: That part of the northwest fractional quarter of section number twenty-two (22), in township thirty-nine, 39, north, of range fourteen east of the third principal meridian, bounded on the north by that part of said quarter section heretofore sold by James Herrington to John S. Wright; and on the east by Lake Michigan; and on the south by that portion of said quarter section sold by said James Herrington to Truman G. Wright; and on the west by the west line of said quarter section, the same being all of said quarter section lying between the south line of the property conveyed as aforesaid to John S. Wright, and the north line of the tract conveyed as aforesaid to Truman G. Wright: To have and to hold the same to him, the said Giles Spring, his heirs and assigns, forever.

In testimony whereof, I have hereunto set my hand and seal this twenty-sixth day of April, A. D. 1842.

CHARITY HERRINGTON. [L. S.]

Witness—D. DUNHAM.

State of Illinois, Kane County, ss.

I, Mark W. Fletcher, clerk of the Circuit Court for said county, certify that Charity Herrington, whose name appears to this deed as having executed the same, and to me personally known to be the real person described in said deed, appeared before me, and duly acknowledged that she executed the same for the uses and purposes therein expressed.

Witness my hand and the seal of said court at Geneva, this 11th day of June, A. D. 1842.

[SEAL.] M. F. FLETCHER, Clerk.

Filed this 10th April, 1846.

State of Illinois, Cook County, ss.

On the 10th day of April, A. D. 1846, the within instrument was filed for record, and duly recorded "book" 18, page 510.

WM. B. EGAN, Recorder.

The defendants then introduced the following papers in regard to the judgment and proceedings for the sale and for taxes, for the year 1843, of the premises in question, all of which were objected to, and were received subject to objection.

The defendants then called Louis D. Hoord, who testified that he was and is clerk of the Cook Circuit Court, and produced the record of the judgment for the taxes of 1843, lists of lands of real estate, on which taxes not paid, returned by collector, and filed with clerk, notice of publication, judgment, and report of sale for taxes by sheriff, and other papers, as follows:—

The defendant then offered to read the same in evidence, to which plaintiffs objected; and the court permitted the same to be read, subject to objections, to which decision plaintiffs then and there excepted. The defendants then and there read the same, as follows, to wit:—

Collector's Return.

On the twelfth day of August, A. D. 1843, there was filed in the office of the Clerk of the Cook County Circuit Court, by the collector of taxes, Cook County, Illinois, his return, of which the following is a copy:—

"List of lands and other real estate, situate in the county of Cook, and State of Illinois, on which the taxes remain due and unpaid for the year 1842, which I herewith return to clerk of the Circuit Court for judgment agreeably to the statute in such case made and provided.

Copy of Notice of Publication.

Tax Sales.

"List of lands and other real estate situate in the county of Cook and State of Illinois, on which taxes remain due and unpaid for the year 1842, among which appear the following:—

Names.	Part of Sec.	Section.	Town.	Range.	Acres.	Rate.	Valuation.	Co. Tax.	St. Tax.	Sp. Tax.
J. Herrington	N. 43 ac. of N. W. fa.	22	39	19	43	50	2150	10 75	3 22	2 15
Do.	13 a. 5 acts the 43 a. N.W. fa.	"	"	"	13		910	4 55	1 37	91

☞ 41 cents will be aded to each lot or tract of land as cost.

Public notice is given to the owners of the foregoing described list of lands and other real estate, that application will be made to the Circuit Court for the county of Cook, in the State of Illinois, to be holden at the court-house in the city of Chicago, in the said county, on the third Monday of August next, for judgment to be entered against the foregoing lands and town lots for the amount of taxes, interest, and costs due thereon, and for an order to sell the said lands for the satisfaction thereof.

Notice is also given, that on the second Monday next succeeding the term of the Circuit Court, all the lands against which judgment shall be pronounced, and for the sale of which such order shall be made, will be exposed to public sale at the court-house of said county of Cook, or so much thereof as will satisfy the amount of said taxes, interest, and costs due thereon.

May 22d, 1843. J. FILKINS, Clerk.

Copy of Certificate of Publication.

This is to certify that the annexed tax list was published in the Chicago Democrat, a paper published in the city of Chicago, Cook County, Illinois, on the twenty-third day of May, eighteen hundred and forty-three, and that the number of copies was equal to the number of papers circulated that week.

JOHN WENTWORTH, Publisher.

Judgment for Taxes of 1842.

State of Illinois, County of Cook, sct.

Records of the Circuit Court in and for the county of Cook and State of Illinois, at a term thereof begun and held in and for said county on the third Monday in August, in the year of our Lord one thousand eight hundred and forty-three. Present, Hon. Rich'd M. Young, one of the Justices of the Supreme Court of said State, and Presiding Judge of said Circuit Court.

SAMUEL HOWE, Sheriff.

Attest SAMUEL HOORD, Clerk.

THE STATE OF ILLINOIS
vs.
B. G. LISENBY, J. COX, JR. et als.

Be it remembered, that heretofore, to wit, on the twelfth day of August, A. D. 1843, Joseph Filkins, collector in and for the county of Cook aforesaid, reported to and filed with the clerk of the Circuit Court, a list of lands and other real estate situated in the county aforesaid, on which taxes remained due and unpaid for the year therein set forth, and that attached thereto was a certificate signed by John Wentworth, Ed. and Pr. of Chicago Democrat, certifying to the publication of a notice required by the revenue law of this State approved March 15th, 1839, and an amendatory act approved March 6, 1843, which said report is in the words and figures following, to wit, among which are the following:—

Name.	Part of Sec.	Section.	Town.	Range.	Acres.	Rate.	Valuation.	Co. Tax.	St. Tax.	Sp. Tax.
J. Herrington	N. 43 a. of N. W. frs.	22	"	"	43	50	2150	10 75	3 23	2 15
Do.	13 S. and adjoining.	"	"	"	13	50	910	4 55	1 27	91

And afterwards, to wit, on the eighth day of September, A. D. 1843, an order was made and entered of record in the Cook County Circuit Court, of which the following is a true copy:—

And now, at this day, to wit, on the eighth day of September, as yet of this same term, this matter came on to be heard, and the said

plaintiff, by James Curtis, her attorney, and also Sammon and Iredel, the attorneys for the county of Cook.

And it appearing satisfactory to the court that the lands described in the said collector's report, and returned as the S. W. $\frac{1}{4}$ of sec. 5 in town. 36, range 13 E. of the 3d principal meridian, and also the town of Thornton, situated on section No. 36 north, of range No. 14 east of the third principal meridian, were not taxable when so assigned as aforesaid, it is ordered by the court that the same be stricken from the same return.

And whereas due notice has been given of the intended application for a judgment against said lands, and no owner or owners otherwise than above hath or have appeared to make sufficient or show cause why judgment should not be entered against the said lands for the interest and costs due and unpaid thereon for the year or years therein mentioned.

Therefore it is considered by the court, that judgment be and it is hereby entered against the aforesaid tract or tracts of land or parts of tract in the name of the State of Illinois, for the sum annexed to each tract or parcel of land, being the amount of tax, interest, and cost due thereon severally, and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes, interest, and costs annexed to them severally, be sold as the law directs.

Judgment signed this eighth day of September, A. D. 1843.

SAMUEL HOORD,
Clerk Cook Cir. Co.

Afterwards a precipe was delivered to the sheriff of said county to execute, to wit:—

(Sheriff's return for taxes of 1842, sold 18th Sept., 1843.)

State of Illinois, County of Cook, sct.

Records of the Circuit Court in and for the county of Cook, and State of Illinois, at a term thereof begun and held in the city of Chicago, in and for the said county, on the third Monday in August, in the year of our Lord one thousand eight hundred and forty-three. Present, the Hon. Richard M. Young, one of the Justices of the Supreme Court of said State, and presiding Judge of said Circuit Court.

SAMUEL J. LOW, Sheriff.

Attest, SAMUEL HOORD, Clerk.

STATE OF ILLINOIS
vs.
B. G. LISINBY, J. COX, Jr. et als.

Be it remembered, that heretofore, to wit, on the twelfth day of August, A. D. 1843, Joseph Filkins, collector in and for the county of Cook aforesaid, reported to and filed with the Clerk of the Circuit Court, a list of lands and other real estate situated in the county

aforesaid, on which taxes remained due and unpaid, for the year therein set forth, and that attached thereto was a certificate signed by John Wentworth, Ed. and Pro. Chicago Democrat, certifying to the publication of a notice required by the revenue law of this State. Approved March 1st, 1839, which said report is in the words and figures following, to wit:—

Names.	Parts of Section.	Section.	Town.	Range.	No. of acres.	Value per acre.	Value.	Co. Tax.	State Tax.	Special Tax.	
J. Herrington	N. 43 of N. W. fr.	22	"	"	43	56	2150	10 75	3 23	2 15	1 acre
Do.	13 T. & adjoining	"	"	"	12	50	910	4 55	1 27	91	W. H. Brown. do.

And now at this day, to wit, on the eighth day of September, as yet of the same term, this matter came on to be heard, and the said plaintiff by James Curtis, her attorney, comes, and also Scammon and Iredel came for the county of Cook, and it appearing satisfactorily to the court that the lands described in the said collector's report and return, as the S. W. $\frac{1}{4}$ of section five, in township thirty-six, range thirteen east of the third principal meridian, and also the town of Thornton, situated in section No. thirty-six north, of range No. 14 east of the third principal meridian, were not taxable when so assessed as aforesaid, it is ordered by the court the same to be stricken from the said return.

And whereas due notice has been given of the intended application for a judgment against said lands, and no owner or owners otherwise than as above hath or have appeared to make sufficient defence, or show cause why judgment should not be entered against the said lands for the taxes, interest, and costs due and unpaid thereon for the year or years therein mentioned.

Therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts of land or parts of tracts in name of the State of Illinois for the sum annexed to each tract or parcel of land, being the amount of tax, interest, and costs due thereon severally; and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of them *of them* to satisfy the amount of taxes, interest, and costs annexed to them severally, be sold as the law directs.

Judgment signed this eighth day of September, A. D. 1843.

SAMUEL HOORD,
Clerk Cook Circuit Court.

State of Illinois, Cook County, ss.

I, Samuel Hoord, Clerk of the Circuit Court in and for the county of Cook aforesaid, do certify the foregoing to be a true copy of the

judgment and proceedings in the matter of the delinquent tax list therein set forth.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Chicago, this fourteenth day of [SEAL.] September, in the year of our Lord one thousand eight hundred and forty-three. SAMUEL HOORD, Clerk.

I, Samuel J. Low, Sheriff of Cook County and State of Illinois, do hereby certify, that, by virtue of the foregoing precept issued out of the Circuit Court of Cook County and State aforesaid, and to me directed, bearing date the eighth day of September, A. D. 1843, I did on the eighteenth day of September, A.D. 1843, and following days, expose for sale at public auction at the court-house, in the city of Chicago, in the county of Cook and State of Illinois, in conformity with all the requisitions of the statute in such case made and provided; and I then and there sold all the lots, out-lots, pieces, parcels, and tracts of land to the parties whose names are set opposite thereto in the foregoing list for satisfaction of the judgment therein. SAMUEL C. LOWEL,
Sheriff of Cook County, Illinois.

(*Tax Deed.*)

Sheriff to William H. Brown.

The defendant then introduced and read in evidence the following deed, their due execution having been admitted by plaintiff.

But to the admission of which, said plaintiffs, by their counsel, objected, and which were received by the court subject to objection, to which decision of the court the plaintiffs excepted.

Sheriff of Cook Co., to Wm. H. Brown:—

Know all men by these presents, that whereas, at the August Term, 1843, of the Circuit Court of Cook County, in the State of Illinois, a judgment was obtained in said court in favor of the State of Illinois, against the following described tract or parcel of land, to wit: thirteen acres south and adjoining the north forty-three acres of the northwest fractional quarters of section twenty-two, in township thirty-nine north, of range fourteen east of the third principal meridian, for the sum of seven dollars and thirteen cents, being the amount of taxes, interests and costs assessed upon said tract of land for the year 1842. And, whereas, on the twentieth day of September, 1843, Samuel J. Lowe, then sheriff of the county aforesaid, by virtue of a precept issued out of the Circuit Court of the county aforesaid, dated the fifteenth day of September, 1843, and to him directed, did expose to public sale at the door of the court-house in the county aforesaid, in conformity with all the requisitions of the statute in such case made and provided, the tract of land above described, for the satisfaction of the judgment so rendered as aforesaid.

And whereas, at the time and place aforesaid, William H. Brown, of the county of Cook, in State of Illinois, having offered to pay the aforesaid sum of seven dollars and thirteen cents, for said piece or tract of land, which was the least quantity bid for the said tract of land, was stricken off to him at that price.

Now, therefore, I, Cyrus P. Bradley, sheriff of the said county of Cook, and successor of the said Samuel J. Lowe, late sheriff as aforesaid, for and in consideration of the said sum of seven dollars and thirteen cents, to him in hand paid, by the said purchaser, at the time of this aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said William H. Brown, his heirs and assigns, the premises so sold as aforesaid, situated in the county of Cook, and State of Illinois, to wit: thirteen acres south and adjoining the north forty-three acres of the northwest fractional quarter of section twenty-two, in township thirty-nine north, of range fourteen east of the third principal meridian, to have and to hold unto him, the said William H. Brown, his heirs and forever, subject, however, to all the rights of redemption provided by law.

In witness whereof, I, William L. Church, sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name, and affixed my seal this eighteenth day of February, eighteen hundred and fifty-three. CYRUS P. BRADLEY, [L. S.]

Sheriff of Cook County, Illinois.

State of Illinois, County of Cook, ss.

On this nineteenth day of February, A. D. 1853, before me, Edmund S. Kimberly, clerk of the County Court of said county, appeared Cyrus P. Bradley, sheriff of said county, personally known to me to be the real person whose name is subscribed to the above deed, as having executed the same as such sheriff voluntarily and freely for the uses and purposes therein set forth.

Certified under my hand and the seal of the said court, the day and year aforesaid.

[SEAL.] EDMUND S. KIMBERLY, Clerk.

Judgments against Jas. Herrington, A. D. 1838.

The defendant then again called Louis D. Hoord, Clerk of Circuit Court, who testified that he is clerk of Circuit Court, and has custody of its records, and who produced record book C, page 124, and read it in evidence the judgment in favor of—

CHARLES HARMON and HORATIO G. LOOMIS
vs.
JAMES HERRINGTON.

Also the following judgments and executions, and the returns indorsed thereon, which said judgments, executions and returns are as

follows, to wit, to the introduction of which the plaintiffs objected, and the court received the same subject to objections, to which decision of the court the plaintiff then and there excepted.

Weed and Allen Judgment. March 12th, 1838.

WILLIAM ALLEN and CEPHAS WEED, executors of EDWARD STEPHENS,
vs.
JAMES HERRINGTON and NEHEMIAH KING. } Assumpsit.

This day come the parties by their attorneys, and the defendants by their attorneys, and the defendants by their attorneys file this demurrer to the plaintiffs' declaration, and the plaintiffs their joinders; after arguments of counsel had thereon, the same is overruled by the court. Whereupon it is ordered that the defendants plead herein by nine o'clock to-morrow morning.

March 16th, 1838.

WILLIAM ALLEN and CEPHAS WEED, executors of EDWARD STEPHENS,
vs.
JAMES HERRINGTON and NEHEMIAH KING. } Assumpsit.

This day come the plaintiffs by Spring and Goodrich, their attorneys, and the defendants being called come not, nor any person for them, but herein make default, which is entered of record. It is therefore considered by the court that the plaintiffs recover their damages; but because they are unknown to the court, as this is an action brought on an instrument in writing for the payment of money only, by direction of the court the clerk assesses the damages and reports the same to the sum of one hundred and twenty-two dollars. It is therefore considered by the court that the plaintiffs recover their damages aforesaid, together their costs herein expended, and that they have execution for the same.

(Copy of Execution, No. 1745.)

State of Illinois, Cook County, ss.

The people of the State of Illinois, to the Sheriff of Cook County, greeting:—

We command you that of the goods and chattels, lands and tenements of James Herrington and Nehemiah King, which shall be found in your county, you cause to be made the sum of one hundred and twenty-two dollars, which William Allen and Cephas Weed, executors of Edward Stephens, deceased, hath lately in the Circuit Court of said county recovered against them for their damages, by reason of certain trespasses by them, the said Herrington and King, to the said Allen and Weed lately done, and also the further sum of nine dollars fifty-seven ½ cents, which were adjudged to him for his costs and charges in that behalf expended, whereof the said Herring-

ton and King are convicted, as appears to us of record, and have that money ready in ninety days from the date hereof, to render to the said Allen and Weed for their damages and costs aforesaid.

Hereof fail not, and make return of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

Witness Richard J. Hamilton, clerk of our said court, and the seal thereof at Chicago, this tenth day of April, A. D. 1838.

[SEAL.] (Signed) RICH'D J. HAMILTON, Clerk.

Weed and Allen Execution.

(Copy of Execution, No. 3516.)

State of Illinois, County of Cook, ss.

The people of the State of Illinois, to the sheriff of Cook County, greeting:—

We command you, as we have heretofore, that of the goods and chattels, lands and tenements of James Herrington, and Nehemiah King, which shall be found in your county, you cause to be made the sum of one hundred and twenty-two dollars, which William Allen and Cephas Weed, executors of Edward Stephens, dec'd, hath lately in the Circuit Court of said county, recovered against them for their damages, by reason of certain trespasses of them the said Herrington and King, to the said Allen and Weed lately done, and also the further sum of nine dollars fifty-seven ½ cents, which were adjudged to him for his costs and charges in that behalf expended, whereof the said Herrington and King are convicted, as appears to us of record; and have that money ready in ninety days from the date hereof, to render to the said Allen and Weed for their damages and costs aforesaid.

Hereof fail not, and make return of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

[SEAL.] Witness, Richard J. Hamilton, clerk of our said court, and the seal of said court, at Chicago, this eighth day of July, A. D. 1840.

(Signed) RICHARD J. HAMILTON, Clerk.

Sheriff's Return.

The following is the endorsement on the back of the foregoing execution:—

Rec'd July 10, 1840, at 10 o'clock A. M.

By virtue of the within I did, on the tenth day of July, A. D. 1840, levy on all the right and title and interest of James Herrington to the northwest fractional quarter section number 22, township number 39 north, range 14 east of the third principal meridian.

Attached to said execution is the following:—

By virtue of the annexed execution and levy, and one other, num-

ber 3516, I did, on the fourth day of August, A. D. 1840, having previously advertised the same according to law, expose to public sale at the City Hotel, in the city of Chicago, county of Cook, between the hours of nine o'clock in the morning and the setting of the sun of the same day, all the right, title, and interest of James Herrington to the property levied on said described on said execution, to wit: The northwest fractional quarter section number twenty-two (22), township number thirty-nine (39) north, range fourteen (14) east of the third principal meridian, and said tract or parcel of land was sold subject to whatever legal right or lien by judgment Josiah S. Brueze and Edward Shepard have or may have, if any, upon the same, by virtue of a certain judgment rendered in favor of said Breeze and Shepard, and against James Herrington, in the Cook Circuit Court, and Giles Spring, as attorney of William Allen and Cephas Weed, bid therefor the sum of nine hundred and fifty-three $\frac{6}{100}$ dollars, which being the highest and best bid, the said tract or parcel or lot of land, and struck off and sold to him by me, and the money divided between this execution and the one numbered 3515, which was in my hands, and levied on at the same time with this, and I return this execution satisfied in full for damages and costs, as per plaintiff's att'ys' receipt.

(Signed) ISAAC R. GAVIN,
Sheriff Cook Co., Ills.
By S. J. LOWE, Dept. Sheriff.

"Received the amount of the within execution Augt. 4, 1840.
(Signed) SPRING & GOODRICH, Pl'ffs' Att'ys.

Harmon and Loomis's Judgment.

March 12th, 1838.

CHARLES L. HARMON and HORATIO G. LOOMIS vs. JAMES HERRINGTON. } Assumpsit.

This day come the parties by their attorneys, and the defendant, by Strade, his attorney, files his demurrer to the declaration herein, and the plaintiffs their joinder. After argument of counsel had thereon, the demurrer is overruled, whereupon the defendant being called comes not, nor any person for him, but herein fails and makes default, which default, by order of court, is entered of record. It is thereupon considered that the plaintiffs recover their damages; but their damages being unknown to the court, as this is an action brought on an instrument of writing for the payment of money; also, by direction of the court, the clerk assesses the damages and reports the same to the sum of six hundred and fifty-eight dollars and ninety-one cents. It is therefore considered of the court that the plaintiffs have and recover of the defendant six hundred and fifty-eight dollars and ninety-one cents, their damages assessed as aforesaid, together

with their costs and charges by them herein expended, and that they have execution therefor.

1*st Execution.*

(Copy of Execution.)

State of Illinois, Cook County, ss.

The people of the State of Illinois to the Sheriff of Cook County, greeting:—

We command you, that of the goods and chattels, lands and tenements of James Herrington, which shall be found in your county, you cause to be made the sum of six hundred and fifty eight$\frac{91}{100}$ dollars, which Charles L. Harmon and Horatio G. Loomis hath lately in the Circuit Court of said county recovered against him for their damages, by reason of certain trespasses by him, the said Herrington, to the said Harmon and Lewis lately done, and also the further sum of nine dollars sixty cents, which were adjudged to him for his costs and charges in that behalf expended, whereof the said James Herrington is convicted, as appears to us of record, and have that money ready in ninety days from the date hereof, to render to the said Harmon and Loomis for their damages and costs aforesaid.

[658 91]
[9 60]

Hereof fail not, and make return of this writ in ninety days from this date, hereof fail with an endorsement thereon, as to the manner in which you executed the same.

Witness Richard J. Hamilton, clerk of our said court, and the seal thereof at Chicago, this tenth day of April, A. D. 1838.

(Signed) RICHARD J. HAMILTON, Clerk.

Harmon & Loomis' Execution.

(Copy of 2d Execution.)

2d Execution.

State of Illinois, Cook County.

The people of the State of Illinois to the sheriff of Kane County, greeting:—

We command you, that you of the goods and chattels, lands and tenements of James Herrington, which shall be found in your county, you cause to be made the sum of six hundred and fifty-eight$\frac{91}{100}$ dollars, which Charles L. Harmon and Horatio G. Loomis have lately in the Circuit Court of said county recovered against him for their damages, by reason of certain trespasses by him, the said James Herrington, to the said Charles L. Harmon & Horatio G. Loomis, late done, and also the further sum of ten$\frac{85}{100}$ dollars costs, which were adjudged to him for his costs and charges in that behalf expended, whereof the said James Herrington is convicted, as appears to us of record.

[Seal.]
[$658 91]
[10 85]

And have that money ready in ninety days from the date hereof, to render to the said Charles L. Harmon and Horatio G. Loomis for their damages and costs aforesaid.

Hereof fail not, and make return of this writ in ninety days from the date hereof, with an endorsement thereon, as to the manner in which you executed the same.

Witness Richard J. Hamilton, clerk of our said court, and the seal of our said court at Chicago, this 26th day of December, A. D. 1838.

(Signed) RICHARD J. HAMILTON, Clerk.

Endorsement on the back: "Returned by pl'ffs, directed not to be sent out."

Harmon & Loomis' Execution.

(Copy of 3d Execution.)

3d Execution.

State of Illinois, Cook County, ss.

The people of the State of Illinois to the sheriff of Cook County, greeting:—

We command you, as we have heretofore, that of the goods, chattels, lands, and tenements of James Herrington, which shall be found in your county, you cause to be made the sum of six hundred and fifty-eight $\frac{91}{100}$ dollars, which Charles L. Harmon & Horatio G. Loomis hath lately in the Circuit Court of said county recovered against him for their damages, by reason of certain trespasses by him, the said Herrington, to the said Harmon & Loomis, lately done, and also the further sum of ten dollars eighty-five cents, which were adjudged to him for his costs and charges in that behalf expended, whereof the said Herrington is convicted, as appears to us of record, and have that money ready in ninety days from the date hereof, to render to the said Harmon & Loomis for their damages and costs aforesaid. Hereof fail not, and make return *return* of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

Witness, Richard J. Hamilton, clerk of our said court, and the seal of said court, at Chicago, this eighth day of July, A. D. 1840.

[SEAL.] (Signed) RICHARD J. HAMILTON, Clerk.

Endorsement on back of writ last above mentioned: Received July 10th 1840, at 10 o'clock A. M.

By virtue of the within, I did levy on all the right, title, and interest of James Herrington to the northwest fractional quarter section number 22, township number 39 north, range 14 east of the third principal meridian.

(Signed) ISAAC R. GAVIN, Sheriff C. C.
By J. LOWE, Dep'ty Sh'ff.

Sheriff's Return.

(Copy of sheriff's return attached to said writ.)

By virtue of the annexed execution and levy, and one other, number 3516, I did, on the fourth day of August, A. D. 1840, having

previously advertised the same according to law, expose to sale at public auction, at the City Hotel in the city of Chicago, county of Cook, between the hours of nine o'clock in the morning and the setting of the sun of the same day, all the right, title, and interest of James Herrington to the property levied on and described on said execution, to wit: the northwest fractional quarter section number twenty-two (22), township number thirty-nine (39) north, range fourteen east of the third principal meridian; and said tract, parcel, or lot of land was sold, subject to whatever legal right or lien by judgment Josiah S. Breeze and Edw'd Shepard have or may have, if any, upon the same, by virtue of a certain judgment rendered in favor of said Breese and Shepard, and against James Herrington, in the Cook Circuit Court, and Giles Spring, as assignee for Charles L. Harmon and Horatio G. Loomis, bid therefor the sum of nine hundred and fifty-three $\frac{63}{100}$ dollars, which being the highest and best bid, the said tract, parcel, or lot of land was struck off and sold to him by me, and the money divided between this execution and the one hundred 3516, which was in my hands and levied on at the same time with this, and I return this execution satisfied in full for damages and costs. (Signed) ISAAC R. GAVIN,
Sheriff, Cook County, Ill.
By S. J. LOWE, Dep'ty Sh'ff.

Copy of receipt endorsed on back of execution:—
Received the amount of the within execution, Aug. 4th, 1840.
(Signed) SPRING & GOODRICH, Pl'ffs' Att'ys.

Transcript from Execution Docket of the Clerk of the Circuit Court of the County of Cook.

	Date.	When returned, &c.	Amount of judgment.	Costs.	Folio of record.
1784.					
Harmon & Loomis	1838.	1838.			
vs.	April 10.	July 10.	$658 91	$9 60	C, 124
James Herrington.					
1745.					
Allen & Weed, Ex. of E. Stephen,					
vs.	"	"	122 00	9 57½	C, 119
Herrington & King.					
1746.					
Same vs. Same.	"	"		2 75	
2183.					
Charles L. Homan & Horatio G. Loomis	Dec. 26.	M'ch 26.	658 91	10 85	C, 124
vs.					
James Herrington.					

No. of former execution.	Satisfaction of judgment.	Sheriff's return.	When and to whom delivered.
		No return.	
		No return endorsed on execution.	
1734.	Return by plaintiff, and directed not to be sent out.	No return.	H. G. Loomis, Dec. 26, 1838. Correct.

Sheriff of Cook Co. to Giles Spring, November 1841.

The defendant then introduced and read in evidence the following deeds and conveyances then due, execution having been admitted, to the introduction of which in evidence the plaintiffs objected, but the same were received in evidence by the court subject to objection. To which decision the plaintiffs there and then excepted.

Sheriff of Cook County to Giles Spring.

Whereas Charles L. Hamon and Horatio G. Loomis, at the March term of the Circuit Court of Cook County, A. D. eighteen hundred and thirty-eight, recovered a judgment against James Herrington for the sum of six hundred and fifty-eight dollars and ninety-one cents and costs of said suit; and also whereas William Allen and Cephas Weed, executors of Edward Stephens, deceased, did at the March term of the Circuit Court for the county of Cook, A. D. eighteen hundred and thirty-eight, recover a judgment against James Herrington and Nehemiah King for the sum of one hundred and twenty-two dollars and costs, upon which judgment of Hamon and Loomis against said Herrington an execution was issued dated on the 8th day of July, A. D. one thousand eight hundred and forty, and upon which said judgment of Allen and Weed, executors of Edward Stephens, deceased, against said Herrrington, an execution was issued dated on the said eighth day of July, A. D. 1840, directed to Isaac R. Garvin, the sheriff of Cook County, to execute, and by virtue of said two executions the said Isaac R. Garvin levied upon the lands hereinafter described, and the same were struck off and sold to Giles Spring, he being the highest and best bidder therfor, and the time and place of the sale thereof having been duly advertised according to law.

Now, therefore, know all by this deed, that I, Ashbell Steele, Sheriff of said County of Cook, in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said Giles Spring, his heirs and assigns, the following described tract or parcel of land, to wit: the northwest fractional quarter of section number twenty-two, township number thirty-nine (39) north, of range fourteen east of the third principal meridian, to have and to hold the said described premises, with all the appurtenances thereunto belonging, to the said Giles Spring, his heirs and assigns forever.

Witness my hand and seal, this day of November, in the year of our Lord one thousand eight hundred and fifty-one.

ASHBELL STEEL, [SEAL.]
Sheriff of Co. Ills.

State of Illinois, Cook County, ss.

This day personally appeared before me, the undersigned, clerk of the Circuit Court in and for the county of Cook, Ashbell Steele, sheriff of said county, and acknowledged before me that he executed the foregoing deed freely and voluntarily for the uses and purposes therein expressed, the said Steele being personally known to me to be the person who executed the said deed.

Given under my hand and seal of office, this twelfth day of February, A. D. 1842.

[SEAL.] H. GEO. HUBBARD, Clerk.

Filed this twelfth day of February, A. D. 1842.

ELI B. WILLIAMS, Recorder.

State of Illinois, Cook County, ss.

I, Louis D. Hoord, Clerk of the Circuit Court, and ex-officio recorder of the county of Cook, in the State of Illinois, do hereby certify that the above is a true copy of a sheriff's deed to Giles Spring, which was recorded in my office, on the 12th day of February, A. D. 1842, in book No. 7 of deeds, on pages 107 and 108.

Certified under my hand and the seal of said court at Chicago, this 6th day of October, A. D. 1853.

LOUIS D. HOORD, Clerk, &c.

The official character of each of the foregoing officers mentioned in this bill of exceptions was admitted.

Giles Spring to Wm. H. Brown, July 12th, 1842.

Giles Spring and wife to Wm H. Brown.

This indenture, made the twelfth day of July, in the year of our Lord one thousand eight hundred and forty-two, between Giles Spring and Lavanders, his wife, of Chicago, State of Illinois, parties of the first part, and Wm. H. Brown, of the same place, party of the second part, witnesseth, that we, said party of the first part, for and in consideration of twelve hundred dollars, in hand paid by the said party of the second part (the receipt of which is hereby acknowledged), have granted, bargained, remised, released, sold, conveyed, and quit claimed, and by these presents do remise, release, sell, convey, and quit claim unto the said party of the second part, his heirs and assigns forever, all the following described lot or parcel of land, situate, lying and being in the city of Chicago, and State of Illinois, and known and described as part and parcel of the northwest fractional quarter of section number twenty-two (22), in township thirty-nine *nine* (39) north, of range number fourteen (14) east of the third principal meridian, and bounded on the north by land conveyed by James Herrington to John Wright, on the east by Lake Michigan, on the south by land conveyed by James Herrington to Truman G. Wright, and on the west by the west line of said quarter section, containing thirteen acres of land, be the same more or less, together

with all and singular the hereditaments and appurtenances therewith, or in anywise belonging or appertaining, to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever, and the said party of the first part for himself, his heirs, executors and administrators, doth covenant and agree to and with the said party of the second part, his heirs and assigns, that he will warrant and forever defend the aforesaid premises to be free and clear of all claim or claims of all and every person or persons claiming or to claim, by, through or under him and none others.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

GILES SPRING, [SEAL.]
LERVANDERS SPRING. [SEAL.]

Sealed and delivered in presence of
GEO. DAVIS.

State of Illinois, Cook County, ss.

Personally appeared before me, the clerk of the County *County* Commissioners Court, in and for the said county, Giles Spring and Lavantia, his wife, personally known to me as the same persons who signed the within deed, who declares that they executed the same freely and voluntarily, for the uses and purposes therein set forth.

And the said Lavantia, wife of the said Giles Spring, being by me made acquainted with the contents of the within deed, declared she signed the same without fear or compulsion from her husband, that she relinquished thereto her right of dower, and does not wish to retract the same; said interrogatories to the said Lavantia were answered apart from and out of hearing of her said husband.

In testimony I have hereunto set my hand and the seal of said county, this 14th July, 1842.

[SEAL.] GEO. DAVIS, Clerk.

Filed this 22d day of February, A. D. 1844.
WM. B. EGAN, Recorder.

State of Illinois, Cook County, ss.

I, Louis D. Hoord, Clerk of the Circuit Court and ex-officio Recorder in and for said county, do hereby, that the foregoing is a true copy of a deed from Giles Spring and wife to William H. Brown, which was recorded in my office on the twenty-second day of February, A. D. eighteen hundred and forty-four, and is recorded in book number eleven of deeds, at page one hundred and eleven.

Given under my hand and the seal of said court at Chicago in the county aforesaid, this 6th day of October, A. D. 1853.

[SEAL.] L. D. HOORD, Clerk.

Bond from William H. Brown to Matthew Laflin.
Sept. 26, 1845.

The defendant then introduced and read in evidence the following bond from William H. Brown to Matthew Laflin, the handwriting of said Brown having been admitted; to the introduction of which in evidence the plaintiff objected, and the court received the same subject to execution, to which decision the plaintiff excepted at the time.

No. 1. Bond referred to in testimony of Wm. H. Brown.

Know all men by these presents, that I, William H. Brown, am held and firmly bound unto Matthew Laflin in the penal sum of three thousand dollars, for the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with my seal and dated this 20th day of September, 1845.

The condition of the above obligation is such, that, whereas the said Brown has this day sold to said Laflin an equal undivided half part of a certain tract of land, being part of the northwest fractional quarter of twenty-two, town thirty-nine north, range fourteen east, known as the Harrington place, bounded on the north by land sold by the State Bank of Illinois to Augustus Garret, commencing seventeen chains and eighty links from the northwest corner of said fractional quarter section twenty-two on State street, and running thence south five chains and eighty-eight links to Giles Spring's lands, thence east to Lake Michigan, from the point seventeen chains and eighty-two links from the northwest corner of fractional quarter of section twenty-two, on State street aforesaid, run east to Lake Michigan, supposed to contain fifteen $\frac{70}{100}$ acres, be the same more or less. And whereas the said Laflin has this day executed and declared to said Brown his two promissory notes, one for seven hundred and eighty-five dollars, payable three months after date, and the other of like sum, payable in six months after date.

Now if, upon the payment of the said notes aforesaid, the said William H. Brown shall execute and deliver to the said Matthew Laflin, his heirs and assigns, a good and sufficient warrantee-deed of the lands herein described with relinquishment of dower, then the above obligation to be void, otherwise to remain in full force and virtue. W. H. BROWN. [SEAL.]

2d. Deed of Wm. H. Brown to Matthew Laflin.

The defendant then introduced and read in evidence the following deed and conveyances, the execution of which was admitted, to the introduction of which the plaintiffs objected, but the court permitted the same to be read in evidence subject to objection.

This indenture, made the twenty-second day of September, in the year of our Lord one thousand eight hundred and forty-eight, between William H. Brown and Harriet C. Brown, his wife, to the city

of Chicago, Illinois, Matthew Laflin of the same place, of the second part: Witnesseth, that the said party of the first part, for and in consideration of the sum of fifteen hundred seventy-five dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged; and the said party of the second part forever released and discharged therefrom, has granted, bargained, and sold, and by these presents does grant, bargain, and sell unto the said party of the second part, and to his heirs and assigns, forever, all the following described premises, situated, lying, and being in the county of Cook, and State of Illinois, and known and described as follows, to wit: The equal undivided one-half part of a certain tract of land, being part of the northwest fractional quarter of section twenty-two (22), town thirty-nine north, range fourteen east, known as the Harrington Place; bounded on the north by lands sold by the State Bank of Illinois to Augustus Garret, commencing seventeen chains and eighty-two links from the northwest corners of said fractional section twenty-two on State Street, and running thence south five chains and eighty-eight links to Giles Spring's lands; thence east to Lake Michigan; from the point, seventeen chains and eighty-two links from the northwest corner of said fractional quarter section twenty-two on State Street aforesaid, run east to Lake Michigan, the whole tract supposed to contain fifteen $\frac{70}{100}$ acres, be the same more or less, excepting and reserving from this conveyance one acre of land in the southeast corner of said land above described, deeded to —— Best, and upon which his brewery now stands, the consideration of which sale, to wit, five hundred dollars, having been received and divided between said Brown and Laflin, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and issues and profits thereof, all the estate, right, title, and interests, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above premises, with the hereditaments and appurtenances: To have and to hold the said premises above and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said William H. Brown, for himself, his heirs, executors, and administrators, do covenant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that, on the time of the ensealing and delivery of these presents, the said premises are free and clear of all former and other grants, bargains, sales, liens, judgments, and incumbrances, of what kind or nature soever done or suffered by the said party of the first part, and the above premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part hath hereunto set their hands and seals the day and year first above written.

WILLIAM H. BROWN, [L. S.]
HARRIET C. BROWN, [L. S.]

Signed, sealed, and delivered in the presence of
HENRY BROWN.

State of Illinois, Cook County, ss.

I, Henry Brown, a notary public in and for the said county, and in the State aforesaid, do hereby certify that William H. Brown and Harriet C. Brown, who are personally known to me as the real persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth; and the said Harriet C. Brown, wife of the said William H. Brown, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she did not wish to retract the same.

Given under my hand and notarial seal this 23d day of September, in the year of our Lord one thousand eight hundred and forty-eight.

[L. S.] HENRY BROWN, Notary Public.

State of Illinois, Cook County, ss.

On this sixth day of October, 1848, the within deed was filed for record, and duly recorded in book No. 28, page 512.

C. S. KIMBERLY, Recorder.

Deed of William H. Brown to Matthew Laflin.

Quit Claim Deed.

This indenture, made this eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, between William H. Browne and Harriet C. Browne his wife, of the city of Chicago, party of the first part, and Matthew Laflin, of the same place, party of the second part, witnesseth, that the said party of the first part, for and in consideration of twenty thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, hath remised, released, sold, conveyed, and quit claimed, and by these presents doth remise, release, and convey, and quit claim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand, which the said party of the first part hath in and to

the following described lot, piece, or parcel of land, to wit, lying in the city of Chicago, and State of Illinois, and known and described as part or parcel of the northwest fractional quarter of section number twenty-two (22), in township thirty-nine (39) north, of range number fourteen east of the third principal meridian, and bounded on the north by land conveyed by James Herrington to John S. Wright, on the east by Lake Michigan, on the south by lands conveyed by James Herrington to Truman G. Wright and on the west by the west line of said quarter section, containing thirteen acres of land, be the same more or less. To have and to hold the same together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever, of the said party of the first part either in law or in equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hereunto set their hands and seals the day and year first above written.

WILLIAM H. BROWN, [SEAL.]
HARRIET C. BROWN. [SEAL.]

Signed sealed and delivered in presence of.

State of Illinois, Cook County, ss.

I, A. J. Brown, a notary public in and for the said county in the State aforesaid, do hereby certify, that William H. Brown and Harriet C. his wife, who are personally known to me as the same persons whose names are subscribed to the foregoing instrument writing, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing, *appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing* as their free and voluntary act for the uses and purposes therein set forth.

And the said Hannah C., wife of the said William H. Brown, having been examined by me separate and apart out of hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements *her dower to the lands and tenements* therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this eighteenth day of February, A. D. 1853. ANDREW J. BROWN,
Notary Public.

The defendant then introduced the following stipulation, signed by attorneys of both parties, in regard to ages of heirs of James Herrington.

Augustus M. Herrington, born July 27, 1820.
Nathan Herrington, born May 29, 1822.
James Herrington, born June 26, 1824.
Fanny Herrington, born Nov. 12, 1826.
Alfred Herrington, born Feb. 21, 1829.
Jane Herrington, born Oct. 30, 1830.
Thaddeus Herrington, born Dec. 5, 1832.
Mary Herrington, born Jan'y 11, 1835.
Margaret Herrington, born Nov. 3, 1836.
Charles Herrington, born April 7, 1839.

The above statement of the time of the birth of the above named persons is admitted, and they are all the living children of James Herrington, deceased, except that Fanny died, as in the other stipulation set forth.

Dated March 2, 1855.

G. GOODRICH,
Att'y for heirs of Herrington, dec'd.
ARNOLD & BECKWITH,
Att'ys of Def'ts.

Oral Testimony.

The defendants thereupon called as a witness on his behalf William H. Brown, who being first duly sworn, testified as follows:—

"I have resided in Chicago since the fall of 1835. I know the tract of land described in the sheriff's deed to Giles Spring. Spring conveyed the 13 acre tract in question to me in 1842. I conveyed the premises to the defendant, Laflin, the first undivided half by deed dated 1848, and the other remaining half in 1853, and the indemnifying bond was given to me by Laflin against the covenant of title in the first deed as part of the consideration of the last conveyance. The said 13 acres in controversy is off the north part of the northwest fractional quarter section twenty-two, township thirty-nine north, range thirteen east, bounded on the north by John S. Wright's 43 acres, on the west by State Street, and on the south by a tract containing 48 acres, sold by Herrington to Truman G. Wright.

I had some acquaintance with James Herrington in his lifetime, and always understood that he lived on the premises in question. The house on the place was built by him, as I have been informed. I bought the place of Giles Spring, July 12th, 1842, and went into possession immediately after my purchase. I purchased in fact of B. W. Raymond some time before I procured Spring's deed, and with the understanding that the deed was to come from Spring. There was a house and barn on the 13 acre tract at the time I purchased. At that time there was an old road running north and south in front of and across the premises, about 200 or 300 feet west of the lake shore, and the house and barn fronted east on that road.

The barn was a little south of the house. The 13 acre tract is 5 chains and 88 links in width.

Oct. 5th, 1842, I paid Noyer Oakes $40,000 for moving the house and barn west, so as to be and fronting east upon Michigan Avenue. They were moved in September previous. In April, 1843, I employed George W. Merrill to make repairs upon the house, which he did. At that time I also put up a good post and board fence, enclosing six or seven acres, embracing the house and barn. The fence extended east to the old road spoken of, and may have taken in a part of that road, and south to the south line of the 13 acre tract, to the north line of the south 48 acres of the quarter, and was extended west as far as Michigan Avenue, or where it would have been if the line of that avenue had at that time been extended, and as far north as John S. Wright's 43 acres on the north side of the quarter section. The land east of the road, on the lake shore, was not enclosed, nor was any part of the tract lying west of Michigan Avenue. (Those facts were open and public.) The first repairs on the house, in 1843, must have been slight. I put it merely in a habitable state. I believe Mr. Danon was my first tenant. Before Danon a Mr. Sainnons was in under Herrington. My impression is that Danon went in in 1843. I cannot remember whether I erected the fence before he went in or not. He had a right to occupy the whole place as I understood it. He had a written lease, which I have looked for, but have been unable to find. The premises were probably described in it as the Herrington place, the name it went by. I should say that the premises leased were the house, barn, and garden. That was all probably that Mr. Danon or any other tenant occupied; outside of the enclosure it was all good prairie land. Anybody had the right to use that part of the land not enclosed. I cannot say how it was described in the lease, but I think it was described as the Herrington place.

In the fall of 1843 and spring of 1844, I made considerable repairs upon the house, at an expense of from $300 to $400; at that time Danon had left. I was then fitting up the house for Mr. Alfred Cowler; Mr. Cowler succeeded Mr. Danon, and went into possession of the house and premises in the spring of 1844, and remained in a year or more; he went out in the spring of 1845. I never made him a written lease, and he never paid any rent. I fitted up the house for him. He occupied all the premises that were enclosed, nothing was said as to how much he was to occupy, he had the same right to one part as the other. After Mr. Cowler left, I rented the premises to an Irishman, and in July, 1845, he sold out to a man by the name of Johnson, and I gave him a written lease, the whole lease having been surrendered and cancelled. I do not recollect what was leased to Johnson, or that any part was reserved. I suppose I leased it as the Herrington place, but I have no recollection of it. The place was called the Herrington place. I believe

it was generally known by that name. I have no recollection of leasing it in any other way, or of that way.

In October, 1845, I sold the house and barn to Benjamin Wilder; Johnson left about that time, and Wilder moved the buildings off the same fall. The defendant Laflin was interested with me in the land as early as 1845, and assisted in getting Johnson off. When Laflin purchased I gave him the bond marked No. 1, the date of the bond being the time of his first purchase, and afterwards, upon his compliance with the terms of the bond, I gave to him the deed of myself and wife, dated Sept. 22d, 1848, in compliance with the terms of the bond on my part. In 1848 I raised a crop of oats in the old enclosure.

In 1847 Mr. Laflin and I fenced in that part of the 13 acre tract in question, lying along the lake shore, east of the old road. On the 6th September, 1847, I paid acc. for manure and ashes.

The fence made in 1847 was made so as to include the said part of the tract lying east of the old road. To make this fence I took down the fence first made. The sand hills along the shore were levelled. In some places they may have been six or seven feet high. They were all levelled along the front of the whole tract, except on the best acre. He was then in possession. After the whole was levelled it was covered with ashes and manure.

For levelling this part of the tract and hauling manure I paid Thomas Cook $91, and to one Mulloway $26. These bills run from June to October, 1847.

I made no efforts to prevent the stealing of turf from the other parts of the tract. There was no turf on this part of the tract, but I did make efforts to keep persons from hauling away sand. I employed to watch and keep intruders off from the shore. In these days people got all their sand in this direction.

In September, 1850, we commenced the construction of a pier in front of the tract in question. The object of it was to prevent the lake from cutting into the land. In 1849 the lake began to cut in, owing to the construction of Johnson's pier north of it. This pier was a regular pier of brick and stone work, and was extended from the shore east into the lake. This is the bill and account for this work, and the first item in it is dated Sept., 1850. The work may have been commenced in 1849. I think it was commenced in 1849, and afterwards extended it into the lake in 1850. Before Johnson's pier was built the lake did not cut into the tract.

From the time I bought of Spring down to the time I sold to Laflin an interest in 1845, no other person was in possession of the premises, and no other person during that time claimed any possession. After I sold an interest to Laflin we were in possession together until 1853, at which time I sold out to him. The lot or tract was designated on Rees and Ruckles' map as Brown & Laflin's tract. This map was published in 1849, and was afterwards in general use in Chicago. In 1852, we leased a part of the premises near the

shore to the Michigan Central Railroad Company. The sale of the acre to Mr. Best must have been a year before the deed was made to him. The deed was made a year after the sale. If that is dated in 1847, the sale must have been in 1846. I have no recollection of the precise date. In 1842 I paid city taxes of that year on this land. I did not pay the State and county taxes for that year, but permitted it to be sold. In 1843 I paid all taxes for county and State. I do not find a tax receipt among my papers for the city taxes of that year. I believe there was no assessment for that year by the city. I also paid State and county taxes for the ensuing years of 1844 and 1845, on the whole tract, which was assessed as 13 acres.

In 1846 I paid State and county taxes on 13 acres, of the tract which was assessed as 13 acres; also the city taxes for the same year 1846 on 12 acres of the tract which was assessed as 13 acres.

In 1847 the tract was assessed as 13 acres by the county and city both. I paid the State and county taxes for that year on twelve acres of the tract undivided, and the city taxes on the whole 13 acres. In the succeeding years of 1848 and 1849 I paid all State, county, and city taxes on an undivided 12 acres of the tract which was assessed as 13 acres, and Best paid the taxes on the other acre for 1848 and 1849, but not State and county taxes for 1847, for which year it was sold. After that time Best paid all the county, and State, and city taxes on one acre assessed to him for the years 1850, 1851, 1852, and 1853, and Laflin and I paid all the taxes on the other 12 acres of the tract, which were assessed for those years by the State, and county, and city.

Tax Record.

Here the defendant introduced the warrants issued by the county of Cook, and city of Chicago, for the collection of county, and State, and city taxes, and also the assessment rolls of the same; from which warrants and assessment rolls it appeared in evidence that all the taxes on the said tract of land from the years 1842 to 1853, inclusive, had been paid except as follows: for the year 1843 no assessment by the city of Chicago, county and State taxes for 1842 not paid, and the whole tract sold, Sept. 18, 1843, to William H. Brown, for the taxes of 1842.

1846. City taxes for this year (1846) paid on 12 acres only, the taxes assessed on the whole tract undivided for that year, and unpaid on an undivided one acre warrant for the collection of the taxes of this year, dated Sept. 29, 1846; and ordinance for the assessment of the taxes for that year, and confirmation of the assessment roll passed Sept. 9, 1846, on the 15th February, 1847, an undivided one acre of the tract sold by the city to Samuel J. Lowe for the taxes of 1846. 1847. For this year the county and State taxes on the whole tract were assessed undivided, and the taxes on an undivided 12 acres marked paid, and the State and county taxes

on the other undivided one acre unpaid. The records of the county also show that on the 4th day of July, 1848, one acre of the said tract was sold to William H. Brown for the said taxes of 1847, and the defendant here introduced the tax receipts showing the payments of all taxes for years 1842 to 1853 inclusive, with the exception of city taxes of 1846 and State and county taxes of 1847 on one acre as above stated, and the State and county taxes of 1842 as above stated, and also showing that the taxes of 1853 were paid before the commencement of this suit.

William H. Brown then proceeds as follows;—

My possession was open and notorious; I state this because I know a great many persons knew of it; I went into possession soon after *after* I received my deed from Spring as before stated, and under it; it was called the Brown and Laflin tract on the map gotten up by Rees & Rucker.

William H. Brown cross-examined.

William H. Brown testified further as follows on cross-examination:—

Neither Danon or Cowler used or occupied any part of the land outside of the inclosure; no person lived on any part of the land outside of the inclosure.

No person lived on any part of the tract after Mr. Johnson left in 1845 down to 1852, except Mr. Best; Johnson occupied from July to October, 1845.

Neither Laflin or myself ever inclosed or cultivated any part of the land in question outside of the inclosure described in direct examination at any time—all the land outside of that has been entirely vacant; Michigan Avenue and Wabash Avenue were thrown up in 1847 south across the tract; I am not positive whether they were laid out under the authority of the city; they were made as improvements on the land, and were used as public streets; paid Rettlerburg, May 31, 1847, $23.50 for making streets.

We removed enough of the old fence which was erected in 1843 to build the fence along the shore, so as to inclose a strip of about 300 feet in width.

Full one-half of the old fence was removed, and no oats were raised on the land after this fence was put up along the shore; the land was left open as a common; the part along the shore was inclosed so as to keep the people out, but we never cultivated that or built upon it.

The washing of the lake along the shore would occasionally wash the bank away after this fence was built, and after a year or two it became an insufficient fence and would not turn cattle; the wind blew away the sand from the posts and some of the boards from the posts; I should think the fence remained in such a state as to turn cattle about two years when it began to go to decay and fall down;

I never repaired it when it began to fall to pieces; most of the posts that were washed away by the lake remained until 1852 when the railroad came there; there were some boards on them at that time, but a part of the fence had been washed away.

After 1848 I do not recollect that we did anything on the land, or any part of it, except to build the pier; the pier abutted very near on Best's north line; the Best acre is in the southeast corner of the 13 acres in question; I think the pier was about 20 feet in width, somewhere from 10 to 20 feet; I think we commenced constructing it in 1849—I cannot state the time with any certainty, as I had but little to do with it; I do not state the time definitely; I cannot; I do not know that any person has been in possession since I sold to Laflin in 1853; I do not know that he has since inclosed any part of the tract; I know of no fence being built upon it except those spoken of.

I came here in 1838 as cashier of the State Bank of Illinois, and continued here in that capacity until 1842 or 1843.

My general business in the bank was acting as cashier and making loans.

The bank had a judgment against James Herrington, deceased, in 1838; it was upon a loan made at the bank. I knew James Herrington in his lifetime; no loans were made by the bank to any person, without my knowledge; I knew that Herrington *Herrington* had lived there on the land, and that the place was called after Herrington, who was the patentee.

Before I purchased of Spring, I wrote to Danaill to ascertain whether the patent had issued to him. The controversy in 1837 was about a part of the land between Herrington and Grudon S. Hubbard, was well known; Mr. Herrington was well known here at that time; I recollect the settlement made by Herrington's administrator in the spring of 1841, with the creditors of the estate; I recollect that there was a division of land among them. From the fact that his estate was being administrated, I judged that he was dead; I recollect that the bank took a piece of the land which was divided among the creditors for its debt against Herrington; I know when I bought that derived his title to the tract in question under a sale upon the Hamon and Loomis judgment; I had a conversation with Spring about this Mrs. Herrington's dower before she deeded to Spring. About the time I purchased of Spring, he delivered me Mrs. Herrington's deed to himself.

The first deed to Laflin made by me was a warranty-deed for one-half of my interest in the 13 acres; the indemnifying bond was given to me by Laflin when I sold to him the second half of the land.

That was a part of the terms of the sale; I repaired it, because I had discovered *discovered* some facts in regard to the title which I did not like, and which I then communicated to Laflin; I had there discovered that the execution on Hamon & Loomis judgment was issued after Herrington's death. Mr. Laflin knew all that I did

and purchased at that time with that knowledge; I would not have sold it to him at all, if the title had been perfect. It affected the price I got for the property. It was nothing like the value of the property. I received a house and lot in Washington street in Chicago and the indemnifying bond against the covenants in my former deed to Laflin and in the deed to Best; up to within a short time before I sold to Laflin in 1853, I had always supposed that the execution on the Hamon & Loomis judgment was issued in the lifetime of Herrington, though I must have heard of his death at the time. The reason why I sold was, I thought there might be a controversy, and I wanted to avoid it. I do not know how Danon or Cowles used the land outside of the inclosure, or whether they used it for grazing or for any other purpose.

It was farming land; everybody's cattle would run outside of the inclosure. I have no recollection of examining the sheriff's deed to Spring on the sale of the land in question. When I bought, I never thought anything about looking to see when the writ issued, or anything about it. The south 40 acres of the same quarter section had been mortgaged to Herrington by Truman G. Wright and the mortgage had been foreclosed. I think the meeting of Herrington's creditors, for the purpose of dividing that tract among them, was in the spring of 1841. I never knew that the title was questioned or questionable, until a short time before I sold to Laflin, 1853, but up to that time supposed it perfect. I never looked to see when the execution was issued. I relied at the time on Spring, and I did not suppose he would issue an execution against a dead man. I supposed of course it was issued before his death.

Joseph Kettlestring was then called by defendant.

I was employed by Brown and Laflin in 1847, to throw up the streets on premises in question and threw them up across the tract; they were an extension of Wabash and Michigan *of Wabash and Michigan* avenues. I don't know that they were laid out by the city. I did not do it under direction of the city. Brown paid me for my work, May 31, 1847, $23 50.

Matthias Best was then called by the defendant and testified as follows:—

"I know the 13 acre tract in question. I bought one acre of it in 1846 of Brown, and had a deed which I gave up to him when I received my deed and had paid up in full. I went on to the land sold to me soon after I bought; Laflin let me into possession. Laflin removed the fence spoken of after I went on to my acre. He put the fence along the shore, levelled the sand down, and strew hay, ashes, and manure upon the land, while the men were at work there building fence along the shore, levelling, and manuring. I saw Laflin there every day. My acre is located in the southeast corner of the 13 acre tract. I paid the taxes on it every year since I bought it, except the year 1846. It was sold in 1847 by the city and county,

both for the city taxes of 1846, and State and county taxes of 1847, to Mr. William H. Brown. I have been in possession of that acre ever since I bought it; no one else has been in possession of the acre since I bought it.

The pier built by Laflin and Brown was begun, I think, in 1849. I built a pier on my acre first. I think Laflin's pier was begun in the fall of 1849. The next year, 1850, it was pieced out. It remained thus down to 1852, when the railroad company built their road along there. I have had exclusive possession of my acre since I bought it. Laflin has not had possession of it.

Col. Benj. Wilder being duly sworn on the part of the defendant, testified as follows:—

"I have known the land in question since 1838. I know of Danon's being there; do not recollect when he went there. In 1842 the house was moved from the old road on the Lake shore. It was moved about six hundred feet west to Michigan Avenue. I know of Cowler going there; he went there in 1843 or 1844, and remained fifteen or eighteen months. An Irishman was there after Cowles. Johnson was there after him. I bought the buildings in October, 1845. I removed them over on the south branch of the Chicago River.

After the house was moved by Brown to Michigan Avenue it was pretty thoroughly repaired. The old or first enclosure on the tract was of the rails, and enclosed some four or five acres. The new or second enclosure, which was made after the house was moved to Michigan Avenue, was made of posts and boards. I think a crop of oats was raised in this enclosure in 1846. In 1847 a part of the new fence or second enclosure was taken away and put along the shore. I should think that one-half or two-thirds of the old fence was taken away to build the new. The east line of the old enclosure formed the west line of the new enclosure or fence. After the last fence was built the sand hills along the shore in that enclosure were levelled down. In 1849 or 1848, I will not be certain, the first short pier was put down. The sand washed out and it settled some. The fence along the shore was made for keeping persons from hauling sand away from the premises.

This property was known as the Herrington Place. The first I knew of Mr. Brown's purchase of it was in 1842, when Baker was moving the building. The first I knew of Laflin's having or claiming any interest there was in 1845, when he wanted me to buy the buildings. The property I was at that time in the habit of daily passing on to the lake for water.

Cross-examined by Plaintiffs.

The last fence made on the premises along the shore must have enclosed from two acres to two and a half acres. This fence was made from the fence of the old enclosure. It took to build it, from

one-half to two-thirds of the old fence, and left the land previously enclosed open and public. Full two-thirds of the fence around the northwest side of the old enclosure were taken to fence in along the shore.

I knew James Herrington, deceased. He was well known during his lifetime in this community. His death was notorious, as much so as the death of any other man of that day could be. He was an old settler. He must have moved into this place as early as 1831. He was a man well known.

I came here in 1830. Herrington made the original claim to the quarter section, a part of which is this 13 acres. He lived in the house spoken of. He obtained the land by pre-emption.

The defendant here introduced stipulation in regard to testimony of Charles V. Dyer.

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vs.
M. LAFLIN.

It is admitted that Dr. Charles V. Dyer, on the former trial of this cause, swore in substance that he was an old resident in Chicago; knew the property familiarly; that he knows the Herrington tract; that Danon occupied the house on said premises as early as 1842; knows Danon occupied the same under Mr. Brown; Thomas Cook hauled sand therefrom; never knew anybody but Brown, or Brown & Laflin, to be in possession thereof, or exercise any acts of ownership over the same; their acts and such possession over the same was open and notorious, more so than of any other out property in the city; since Danon & Coates left it, it has been without any house on it.

It is agreed that the above shall be admitted in evidence, as the testimony which said Dyer would give were he present and sworn in the case; and that on the present trial of this cause the same may be read, and shall have the same force and effect as if the same were here given in open court by said witness Dyer.

GOODRICH & MANNIERE, for pl'ffs.
HOWARD & BECKWITH, for def'ts.

Which was read in evidence.

Also read in evidence deposition of Alfred Cowles.

1st interrogatory. What is your name, age, and place of residence? Are you acquainted with the parties to this suit, and how long have you known them?

Answer. My name is Alfred Cowles; I am sixty-two years of age; reside in the county of Santa Clara, State of California. I know the defendant, and have known him eight or ten years. I have no personal acquaintance with the plaintiff, only by reputation.

2d interrogatory. Are you acquainted with the premises and land in controversy in this suit, to wit, all but the undivided two-elevenths

of one-tenth of that part of the northwest fractional quarter of section twenty-two, township thirty-nine north, range fourteen east of the third principal meridian, bounded north by that part of said quarter section conveyed by James Herrington, and Charity his wife, to John S. Wright, by deed dated December 3d, 1834, and recorded in book B, page 275, of the records in the recorder's office of Cook County; west by the west line of said quarter section; south by land conveyed by said James Herrington, and Charity his wife, to Truman G. Wright, by deed bearing date June 3d, 1835, and recorded in the office of the recorder of Cook County, in book H of deeds, page 118; and on the east by Lake Michigan; and how long have you known said premises?

Answer. I know the premises, and my knowledge of them commenced some time in May, 1844.

3d interrogatory: Did you ever occupy said premises, or any part thereof; and if so, when, and for how long a time, and under whom?

Answer. I occupied a portion of said premises, as described in my deposition in the case of Herrington *vs.* Laflin, commencing some time in May, 1844, for near a year, under William H. Brown, of Chicago.

4th interrogatory. If to the foregoing interrogatory you state that you did occupy said premises, state how you occupied, and for what purpose you occupied the same.

Answer. I lived in a dwelling-house, with my family, as a residence.

5th interrogatory. State fully and in detail what improvements were on said premises; describe the house, and inclosures, and extent of cultivation, and fences.

Answer. There was a two-story house, thirty by sixteen, with at least five rooms in it above and below, built of wood. My impression is that there were between five and ten acres of land inclosed by a post-and-board fence of cedar posts and prime boards; there was also a large barn within the same inclosure. There was a crop of oats raised on it while I occupied it.

6th interrogatory. Do you know of any other matter or thing of benefit, advantage, or use to the defendant in this cause? If so, state the same as fully as if particularly inquired of concerning the same.

Answer. I know of nothing further.

The defendant then rested his cause.

And the plaintiffs thereupon proceeded to give further testimony, as follows:—

Plaintiffs' Testimony.

J. Young Scammon being called on the part of the plaintiffs, and duly sworn, testified as follows:—

I was acquainted with James Herrington; the bank had a claim against him in 1838; I was the attorney of the State Bank at Chi-

cago; I presented the account, in behalf of the bank, against his estate in 1839; James Herrington was well known; he was as well known as any man in this county at that time; his death, I presume, was well known; he and one Sterling were the first settlers at a place now called Geneva, in Kane County; the place was then called Herrington Place; he removed there from Chicago, where he had previously lived for many years; Mr. Brown was acquainted with the fact of his death when it occurred, as I believe; he was the cashier of the bank, and generally gave to me such notes and accounts as were to be put in suit or collected; we must have conversed about Herrington's death when it took place, in reference to the bank claim against his estate; I sent the account against the estate, in behalf of the bank, in May 30th, 1839; the cashier generally placed all the accounts and notes of the bank in my hands for collection as the attorney of the bank; the paper now presented to me containing the bank account against the estate is in my handwriting; this claim was afterwards paid to the bank; Mr. Spring Giles, as I understood, sued Herrington's estate for his fees; he was Herrington's attorney; he knew him well, used to stop in his house at Geneva when he was out there attending court in Kane County; he was his attorney in the suit of Gurdan S. Hubbard *vs.* James Herrington, respecting a part of this very land; the case is reported in 1st Scammon; it was the greatest suit of all that time in Chicago; Spring must have known the fact of Herrington's death as soon as any one; Herrington was as well known as any man in all the county.

The plaintiffs thereupon gave in evidence the following statement of account spoken of in the testimony of J. Y. Scammon, as having by him been filed against Herrington's estate, the same having been duly proved.

The president, directors, and company of the State Bank of Illinois have the following demand against the estate of James Herrington, deceased, to wit: A promissory note for $113 31, dated December 7th, 1837, payable to Walter Kimball, with interest, on demand, made by said James Herrington, and endorsed by said Walter Kimball to said bank, upon which said there was paid, August 15th, 1838, $50 00. J. YOUNG SCAMMON,

Chicago, May 30th, 1839. Att'y to said bank.

On the back of which is the following endorsement by their probate justice: "Administrator consents to the allowance of the within, April 8th, 1840.

The plaintiffs thereupon further introduce a paper in evidence, of which the following is a certified copy, which was thereupon read as a part of the evidence in the cause:—

(An Appeal to the Supreme Court.)

JAMES HERRINGTON ads. GURDON S. HUBBARD. } In Chancery.

Mr. Herrington proposes to give Messrs. Spring and Collins the sum of five hundred dollars for their services in obtaining a reversal of the decree in this cause, to be equally divided between them in case the decree is set aside or reversed; and in case the decree be affirmed, then they are to receive nothing for their services, and also to advance to them one hundred dollars as a fee, to be divided between them whether they succeed or not.

Messrs. Spring & Collins agree hereby to accept said proposition, and abide thereby.

Nov. 17, 1836.

J. H. COLLINS,
GILES SPRING,
J. HERRINGTON, JR.

Attest: EDWARD E. HUNTER.

"Estate of James Herrington, Filed Feb. 17th, 1840, and allowed.

State of Illinois, Kane County, ss.

I, James Herrington, clerk of the County Court in and for said county, do hereby certify the above to be a true copy of the original paper on file in my office among the records of the estate of James Herrington, deceased.

In witness whereof I have hereunto set my name and the seal of said County Court, at my office in Geneva, this 1st day of March, 1855. JAMES HERRINGTON, Clerk.

The plaintiffs thereupon gave in evidence a letter written by Giles Spring, bearing date April 23, 1841, having first proved the handwriting of the said Spring, of which the following is a true copy:—

Giles Spring's Letter.

Mr. Dunham.

D'r Sir: I am extremely anxious to have the matter in relation to the sale of the Wright mortgage and the debts against the Herrington estate closed up. If I am to get any the property or anything for my debt I would like to have it.

Suppose you fix upon some day as soon as possible to clear up the matter, and give the sheriff notice to advertise the property for sale on the same day. I understand you that all persons interested had consented to an arrangement, excepting a small amount due some person down south, which you expected. Give Mr. Churchill directions soon. I would like to get my portion so that I could improve it this spring. Resp'y yours, &c.,

G. SPRING.

Directed on the back Mr. Dunham, adm'r of James Herrington, dec'd.

The plaintiff then gave in evidence the following original plat of the partition made by Morris, and the adm'r of Herrington's estate, of the south 48 acres among the creditors of said, made in 1841.

Plat of Partition.

B. State Street, 269 feet B.

John Wright 43 acres.

Mr. H. is to be paid $100 of the claimant's claim.	Herrington 13 acres.	
Surveyor Bradley is to be paid $82 00.		
Spring paid $25, when.	Giles Spring.	Deeded.
$1039 88		
100 00	Jos. Churchill.	"
589 02	David Dunham.	"
7900 00	B. Densmore.	
8536 00	Saml. Carry.	"
7300 00	Charity Herrington.	"
100 00	Alonzo Huntington.	"
105 00	B. S. Morris.	
48 acres in the whole, south of Wright's 43.		
356 63	Hamilton & Grant.	"
A. 1067 feet from A. to B.		
110 72	State Bank.	"
95 7	John S. Wright.	"
140 06	Badman & Starks.	"
91 70	A. H. Fullerton.	
	F. Bird.	Deed.
1119 65	Christian Sachrider.	"
4160 79	John Peter Snyder.	"
Deeded to Morris.		

H. B. [house] Clerk's.

(For scheme see original, p. 368.)

41 acres off of N. W. frac'l ¼ section, No. 22, T. 39 N., B. 14 E., $242 00, $100, is to be paid to Mrs. Herrington.

Buckner S. Morris was then sworn on the part of the plaintiffs, and testified as follows:—

"I am acquainted with James Herrington, deceased. I sued his estate in March, 1840, for fees. He died at least a year before the suit was brought.

Messrs. Spring, Collins, and myself, were engaged as counsel for Herrington in the case of Hubbard. His death was notorious at the time it occurred. He was as well known as any other man at that time. Mr. Spring, Collins, and myself, had claim against the estate. The fact of his death was well known by all, immediately after his death.

There was a tract of land foreclosed against Truman G. Wright in behalf of the administrators of Herrington's estate, in the fall of 1840. At that time the administrators came in to make arrangements about dividing it among the creditors of the estate for their debts. I agreed to purchase the land on execution, and divide it pro rata among the creditors, at Spring and Raymond's solicitation. I bid it off for the benefit of myself and the other creditors of the estate. There was forty-nine acres in the tract to be divided. In the spring of 1841, Messrs. Spring, Raymond, and the administrator Dunham, divided it off among the creditors at the rate of $90 00 per acre. The deeds to the several creditors were made by me about the same time. The deed to Spring for his part of the land, about 18 feet front, was reserved to Mr. Herrington at Spring's instance. Mr. Spring wanted his part set off to him the north side of the tract, and it was so made. Before the division was made Mr. Spring had it surveyed off into parts.

Mr. Wm. H. Brown was present part of the time, with the other creditors while the negotiations between them and the administrators were *were* progressing, representing the bank debt, and the bank took a share of the land. Mr. Spring as creditor, represented claim of Harmon and Loomis, and Weed and Allen judgments, against the estate for fees which I believe he had purchased. There was nothing said at the time of this settlement of Spring's sale, on the execution on Harmon and Loomis judgment. I knew nothing of that sale, it was not mentioned by Spring, nor was anything said about the 13 acres. About a year after this, Mr. Raymond called upon me and said that Spring had sold the whole quarter in the Harmon and Loomis judgment and execution. I called on Spring in reference to this sale, and talked with him on the subject; he said he had no claim to the 48 acres, would give a release to any one for it; he said his sale was not worth a claim.

Mr. Spring's claim against the estate of Herrington was allowed with those of the other creditors, and paid by a strip of the land which was divided from the north side of the 48 acres, about 269 feet in width. I cannot say whether the Harmon and Loomis judgment was included in this claim or not. I don't know whether that claim was paid or not. I cannot say that I know what items made up Spring's claim. He was allowed in the settlement with creditors $1039 88, which was paid in land. All the debts against the estate

held by Spring I understood were settled by the settlement referred to. The administrators expressly said that they would not settle without all claims of creditors were settled. I don't recollect that anything was said about the 13 acres.

I don't recollect when the defendant Laflin came here. I saw him here in 1836, 7; he was here then; he was here a good deal of the time; I did not know of his residing anywhere else; he built here after the canal sale in 1839, on lots bought at that sale, and has resided here ever since.

Cross-examined by defendant.

"The arrangement with creditors of Herrington was made with reference to the south 48 acres. The 13 acres was not included in it. The administrators wanted that the 48 acres should pay all the debts. It was talked that Geneva property was to be left for the widow. Alex. Brown represented the bank in the settlement. It was represented by Brown or Scammon. If Mr. Brown should swear that he did not represent the bank, I should say he would be most likely to know. I have a recollection of delivering the bank deed to Mr. Brown for its part of the land. My impression is that it was made to Mr. Brown directly. No one here acted for the bank at that *that* time, but Mr. Brown and Mr. Scammon.

Gurdon S. Hubbard called by the plaintiffs, testified under oath as follows:—

"I knew Mr. Herrington in his lifetime. He died in 1839. He was a man well known in the country about, and his death was pretty well known here. He was a very prominent character. He was an old citizen here, and was generally known to every one.

The defendant Laflin was here doing business some years before; he came here to reside about 1838. Mr. Spring resided here long before Herrington's death, and continued to reside here afterwards, and died here.

Cross-examination.

Mr. Herrington kept a public house at the time he died at Geneva, where he had resided. He had no public office at the time that I knew of.

Mr. Laflin was for several years after he came here engaged in selling powder along the canal. He had a powder-house in this city, which was his head-quarters. His business was also buying lands. He bought lands here before 1840. I think he bought some west and south in the corporate limits. He bought some lots at the sale of Fort Dearborn addition in June, 1839.

Alonzo Huntington was then called by the plaintiffs, and being sworn, testified as follows:—

"I knew James Herrington in his lifetime; he was a prominent man and was well known here. I came here in the fall of 1835. I

knew him shortly after I came here. He continued well known to the time of his death. He died in March, 1839. His death was notorious through this town. When it occurred I acted as attorney of his estate in the foreclosure of the Truman G. Wright mortgage. The scire facias was brought in the winter of 1840 by the administrators, and judgment was entered of foreclosure in October, 1840. I had frequent conversations with Spring on that subject. Mr. Spring was in the habit of attending the Kane Circuit Court on professional business before Herrington's death. I was then acting as States attorney, and attended sessions of the court. I don't recollect any term he was not there. Herrington lived at Geneva, where the court was held. Spring must have known of Herrington's death as soon as anybody. He was a auditor of the estate. I was employed by the administrators of the estate, and had frequent conversations with him.

There was an arrangement among the creditors by which the south 48 acres was to be divided among them. It was made in the spring of 1841, after the judgment of foreclosure was had. The administrators found they could not do otherwise, and by an arrangement with the creditors the land was bid off on the execution by Judge Morris.

I knew that the bank was a creditor of the estate, and my impression is that the interest was represented by Mr. Brown at the meeting of the creditors and administrators.

The meeting was in my office. The creditors kept coming and going. My recollection is that the bank was represented by Brown. I know that he was looking after the matter. The 13 acres were not included in the settlement that I recollect. The Herrington house was on that. I have no recollection that the Harmon and Loomis judgment was or included in the settlement. I was satisfied it was not. The amount allowed Spring I think was for his own private account against the estate, and the claim of Mr. Collins, which he represented, but not the Harmon and Loomis, and Allen and Weed judgments, as I believe, but do not know certainly.

Cross-examined.

"Mr. Herrington was rather a peculiar kind of man. At that early day, when he was at Geneva, he used to come to Chicago quite often. He was an active kind of a man, and when he came to town, which was then thinly inhabited, he used to make a stir here. He was a man who made his mark wherever he went.

Direct examination resumed.

"I can say that his death was well known here, notorious. I think there was a obituary notice of his death in the papers of the city; his death spoken of as the death of an old settler, well known in the community. The tract in question was called after him, and known as the Herrington place. Since Mr. Brown bought it it has

been known as his by those who knew of his purchase, but the place was commonly known as the Herrington place.

Alexander A. Foulton being called by the plaintiff, testified as follows:—

"I knew Mr. James Herrington in his lifetime. He died some time in the winter or spring of 1839. He was a man who was well known in the community at the time of his death and during his lifetime for many years. His death was a matter of public notoriety here. I was aware of the fact myself at the time, and I was not then in active business. I don't positively know that his death was known to Spring at the time it occurred, but I do not well see how it could have been otherwise. I knew Mr. Wm. H. Brown at that time. I do not positively know that he knew of Herrington's death at that time, but believe that he did. Mr. Brown was residing in the city at the time, and was cashier of the State Bank. He was a very attentive man in his business habits; he watched the interests of the bank pretty well; he was generally at his post at the bank in this city; as much so as any business man here at that time.

I was acquainted with the defendant Laflin in 1839. I first knew him here in 1836–7. I know he was a resident here in 1839. He was agent in the selling of powder, and was purchasing real estate to some extent. This was his residence in 1839, but he was occasionally absent. Mr. Herrington was frequently in this city at that time. This place was sparsely settled. He was pretty noisy, and at that time persons living here would be very likely to meet and know him. He was a man who would be observed more than ordinary men.

I had a claim against the Herrington estate. I was absent at the east when the settlement of the debts against the estate was made by the division of the land. On my return in July, 1841, I was informed by Spring that there had been a meeting of the creditors, and that a part of the land had been set apart for my debt.

Cross-examined by Defendant.

Mr. Laflin's principal business was furnishing powder along the canal. He had a depot on the South Branch just south of the city.

William H. Brown recalled on the part of the plaintiffs, and further testified:—

My impression is that the lands which was set apart to the bank for its debt, was deed by Judge Morris to me.

I suffered the land in question to be sold in 1843 for the taxes of 1842, after I bought of Spring, to get a tax title to it; at that time I was claiming the land under my deed from Spring.

The foregoing is all the testimony that was given by either party on the trial of this cause, and the defendant prayed the court to sign and seal this bill of exceptions, which is accordingly done on this the

4th day of May, 1855, the time for sealing and signing the same having been extended by express stipulation of the parties (which is now on file in this court), to this 4th day of May, 1855.

JOHN M. WILSON, [SEAL.]
Judge of the Cook County Court of Common Pleas.

State of Illinois, County of Cook, ss.

I, Walter Kimball, Clerk of the Cook County Court of Common Pleas, within and for said county and State, do hereby certify that the foregoing is a full, true and correct transcript of the original papers, and also of the order entered on record in said court, now on file in my office, in the case of Augustus M. Herrington and others *vs.* Matthew Laflin.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Chicago, in said county, this ninth day of June, A. D. 1855.

[SEAL.] WALTER KIMBALL, Clerk.

Endorsed on said transcript of record, of which the foregoing is a copy, the following, to wit:—

MATTHEW LAFLIN
vs.
AUGUSTUS M. HERRINGTON and others. } 74.

Appeal filed June 12, 1855. L. LELAND, Clerk.

Costs taxed.

Fees transcript to court $28 85. Paid by appellant.
W. K., Clerk.

Afterwards, to wit, on the twenty-seventh day of June, A. D. 1855, the same being one of the days of the June Term of said Supreme Court for 1855, the following proceedings were had by the court, and entered of record, which said proceedings are in the words and figures following, to wit:—

Wednesday, June 27, 1855.

MATTHEW LAFLIN
vs.
AUGUSTUS M. HERRINGTON and others.

(Appeal from Cook County Court of Common Pleas.)

On motion of Goodrich, counsel for appellees, the appellant is ruled to assign errors herein, by Monday morning next.

Afterwards, to wit, on the sixth day of July, A. D. 1855, the same being one of the days of said June term of said Supreme Court for 1855, the following proceedings were had by the court and entered of record, which said proceedings are in the words and figures following, to wit:—

Friday, July sixth, 1855.

MATHEW LAFLIN
vs.
AUGUSTUS M. HERRINGTON et al.

(Appeal from Cook County Court of Common Pleas.)

This day this cause was partly argued by Arnold, for the appellant, and by Goodrich, for appellees, and continued for further argument.

And afterwards, to wit, on the seventh day of July, A. D. 1855, the same being one of the days of said June term of said Supreme Court, A. D. 1855, the following proceedings were had by the court and entered of record, which said proceedings are in the words and figures following, to wit:—

Saturday, July 7, 1855.

MATTHEW LAFLIN
vs.
AUGUSTUS M. HERRINGTON et als.

(Appeal from Cook County Court of Common Pleas.)

This day the argument of this cause was continued and concluded by Maurine, for the appellees, and by Beckwith, for the appellants, and the court not being fully advised of and concerning the premises, took time to consider.

And aftewards, to wit, on the fourth day of August, A. D. 1855, the same being one of the days of said June term of said Supreme Court, A. D. 1855, the following proceedings were had by the court and entered of record, which said proceedings are in the words and figures following, to wit:—

Saturday, August 4th, 1855.

MATTHEW LAFLIN
vs.
AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, and JANE HERRINGTON, and THADDEUS HERRINGTON, MARY HERRINGTON, MARGARET HERRINGTON, and CHARLES HERRINGTON, who appear by CHARITY HERRINGTON, their next friend.

(Appeal from Cook County Court of Common Pleas.)

On this day came again the said parties, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid, nor in the rendition of the judgment

aforesaid, is there anything erroneous, vicious or defective, and that that record is no error.

Therefore it is considered by the court that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court, that the said appellees recover of and from the said appellants, their costs by them in this behalf expended, and that they have execution therefor.

(Opinion of the Court by Skinner, Justice.)

This was an action of ejectment brought on the 13th day of February, 1854, by Herrington and eight others, against Laflin, to recover nine-tenths of the whole, and nine-elevenths of the remaining tenth of the following premises:—

That part of the northwest fractional quarter of section 22, T. 39 N., R. 14 east of the third principal meridian, bounded north by that part of said quarter section conveyed by James Herrington and Charity, his wife, to John S. Wright, by deed, bearing date December 3d, 1834, recorded in Book B, page 295 of the records or Cook County; west by west line of said quarter section; south by land conveyed by James Herrington and Charity, his wife, to Truman G. Wright, by deed bearing date June 3d, 1835, recorded in Book H, of deeds, page 118, and on the east by Lake Michigan.

Laflin filed his plea of not guilty, and stipulated that at the time of the commencement of the suit he claimed title to the premises. A jury was waived, the cause was tried by the court, and judgment of recovery in fee was rendered for plaintiffs of the interest in their declaration claimed; Laflin appealed and assigned for error the rendition of this judgment. The record being voluminous, only such portions of it will be referred to as may be essential to the points decided in this opinion.

On the trial the plaintiffs proved that the land was patented by the United States to James Herrington, that James Herrington died in March, 1839, and that the interest in the plaintiffs' declaration claimed in the land, descended to the plaintiffs through said James Herrington.

Laflin proved a judgment rendered in the Circuit Court of Cook County, on the 12th day of March, 1838, in favor of Harmon and Loomis against James Herrington; that an execution against said Herrington issued upon said judgment on the 8th day of July, 1840, that the same was levied upon the interest of said Herrington in the northwest fractional quarter of section 22, T. 39 N., R. 14 east of the third principal meridian, and a deed of the sheriff of Cook County under sale upon said execution to Giles Spring, dated 12th February, 1842, that Spring conveyed the same land to William H. Brown 14th July, 1842, and that Brown conveyed the same land to Laflin February 18, 1853.

Laflin proved that he and Brown, under whom he claimed, had

had actual possession of the land (without residence) for seven successive years prior to 1854, and up to the commencement of the suit; that they had payed the taxes on the land for the years 1848, 1849, 1850, 1851, 1852 and 1853, before the commencement of the suit, and that they paid the taxes of 1847 on an undivided twelve acres of the tract. It was proved that the records of Cook County showed that the tract was assessed for taxes of 1847 as thirteen acres of land, that the taxes of that year are marked on the record as paid on an undivided twelve acres, and that they were unpaid on one acre, as appears by said records, and that on the 4th day of July, 1848, one acre of the tract was sold for the taxes of 1847, to William H. Brown.

The question presented is whether Laflin is within the provisions of the first section of the act of 2d of March, 1839. The execution under which the land was sold to Spring having issued after the death of James Herrington, the judgment debtor was void, and the sheriff's deed to him a nullity. Prichet *vs.* Hortsuck, 15 Ill. 279. Brown *vs.* Parker, 15 Ill. 307.

Although Laflin's title is void by means of the death of the judgment debtor prior to the issuing of the execution upon which the land was sold by the sheriff to Spring, we hold his title coupled with seven years' successive actual possession in the absence of fraud "claim and color of title in good faith" within the meaning of the first section of said act.

As the views of the court, upon the construction to be given this section, will appear in an opinion delivered in another case, decided at the present time, it is unnecessary here to state them. But we do not think Laflin has proved the payment of all the taxes legally assessed upon such land for the seven years of possession within the meaning of this section. The purchase of one acre of the tract for the taxes of 1847, by Brown, was not a payment of the taxes as to that acre. Irving *vs.* Brownell, 11 Ill. 402.

Under the act of 1839, the payment of taxes must be co-extensive with the party's color of the title and possession, so far as the color of title and possession relate to the lands, for the recovery of which the suit is brought, or to some distinct part thereof capable of ascertainment by metes and bounds, or to some undivided interest therein capable of determination by computation.

Land has boundaries—is known and ascertained by such boundaries—the quantity is necessarily no part of the description; an undivided interest in lands is known and ascertained by its measure or aliquot portion of the whole tract described by certain boundaries.

"Twelve acres," or "twelve undivided acres," of a tract of land are not twelve acres fixed by certain boundaries, nor are they an undivided portion of a whole tract, as one-fifth, one-ninth, and so forth. A deed for "twelve acres" of a tract of land described by its metes and bounds could convey nothing; the land could not be found, pointed out, nor could possession of it be given.

Nor is "twelve acres undivided" of a tract of land, having fixed boundaries, any certain description of itself, or an interest in the whole tract; it is no definite portion of the whole capable of ascertainment by reference to the description.

What is left for the plaintiffs to recover of the tract of land described in their declaration in this action? And of what land, or of what interest in the land described, could a writ of restitution be executed?

These questions cannot, from the record in this case, be answered. The area or quantity of land in the fractional quarter section, and also within the metes and bounds of the land described in the plaintiffs' declaration, is wholly uncertain. We cannot assume that the tract of land contains thirteen acres; nor can we assume that the taxes paid on an "undivided twelve acres" were paid on any particular portion of the tract containing twelve acres, nor upon twelve-thirteenths, or any other portion of the whole tract.

The statute operates to bar the right, and the same reasons as to certainty of description apply as in cases of conveyance by deed.

What in this case does the payment of taxes shown bar the plaintiff from recovering?

This can only be ascertained by knowing upon what land or upon what interest in the entire tract Laflin and those under whom he claims have paid the taxes for the seven years; and from the proof in the record, it cannot be determined upon what part of the tract, nor upon what portion, undivided the whole, they have paid such taxes.

To bring Laflin within the provisions of the first section of the act of 1839, it is necessary that the proof show that he, and those under whom he claims, had actual possession of the land under claim and color of title, made in good faith, for seven successive years, and that he and they had paid the taxes during that period on the land, or on some ascertained part thereof, or undivided portion of the same.

Judgment affirmed.

Separate Opinion of Caton, Justice.

I shall embrace the occasion to express my views in a very few words upon the first section of the limitation law of 1839, so far as it necessarily involves in the record before us. If the record speaks the truth, it is undeniable that the whole of the taxes on the land in controversy for the year 1847 were not paid. Brown paid the taxes on some undivided portion of the land, but upon no part were all the taxes paid, either by him or any one else. Assuming that there were precisely thirteen acres in the tract, then he paid twelve-thirteenths of the taxes upon the whole tract, and upon each part thereof, and no more. Originally his *his* paper title extended to the whole tract. Subsequently he sold one specified acre of it. Admitting that by selling a part he could circumscribe his paper title so

as to relieve himself from the payment of the taxes upon the portion sold, still, if I understand that statute, it required him to pay all the taxes due upon the portion retained, and to which his paper title did extend, under which he claimed to hold and occupy the premises, and the possession of which is now sought to be defended under the statute. The language of the statute is this: "Every person in the actual possession of lands or tenements under claim and color of title made in good faith, and who shall for seven successive years continue in such possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of such lands or tenements, to the extent and according to the purport of his or her paper title." Now, unless the payment of a part of the taxes satisfies the requirements of a statute which declares that he shall pay all, then the demands of the statute were not answered, and the defendant could not claim its benefits. All does not mean a part, but it means the whole. This is a simple truism, not to be reasoned upon, and it is supposed to be incapable of denial, where our language is understood. He was bound then to pay all the legally assessed upon the land embraced in his paper title, and covered by his possession. This he did not do, unless we assume to falsify the record, upon which alone we have a right to adjudicate. I can see no legal mode of getting over or around this conclusion. Whether he could or could not contract his possession, and limit his paper title, by disposing of a part of the land during the seven years, so as to exonerate himself from the obligation to continue to pay all the taxes upon the original tract embraced in his paper title, I do not express an opinion. It is enough that he did not pay all of the taxes upon any part of the land, the possession of which is now sought to be defended under the statute. Its provisions have not been complied with, and consequently it cannot afford any protection to the defendant.

I am very clear that the judgment should be affirmed.

State of Illinois, Supreme Court, Third Grand Division of said State.

I, Lorenzo Leland, Clerk of the Supreme Court of said State, within and for the Third Grand Division thereof, do hereby certify that the above and foregoing transcript is a full, true, and perfect and complete copy of the records and proceedings and judgment in a certain cause lately pending in said court, by way of appeal from the Cook County Court of Common Pleas, in and for the county of Cook in said State, wherein Matthew Laflin was appellant, and Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, and Jane Herrington of lawful age, and Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, infants under the age of twenty-one years, by Charity Herrington, their next friend, were appellees, and of the whole thereof, as the same appears of record in said court in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Supreme Court at Ottowa, this 8th day of April, A. D. 1858.

[SEAL.] L. LELAND, Clerk of said Supreme Court.
By J. B. RICE, Deputy.

The following evidence and documents were introduced on the hearing of this cause on the part of the defendants, to wit:—

The deposition of John F. Farnsworth, and the exhibits thereto attached, exception being taken to Exhibit "D," as specified in bill of exceptions, taken and filed in this cause, reads in the words and figures following, to wit:—

United States, Northern District of Illinois, ss.

Be it remembered, that on the ninth and fourteenth days of December, Anno Domini one thousand eight hundred and fifty-seven, personally appeared John F. Farnsworth, before me, John W. Magill, a commissioner appointed by the Circuit Court of the United States, in and for the Northern District of Illinois, in the seventh circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States, for the Northern District of Illinois, wherein Walter Laflin is complainant, and Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Joshua Tuthill and Mary Tuthill, his wife, Margaret Herrington, Charity Herrington, *Charity Herrington*, Thaddeus Herrington, and Charles Herrington, a minor, and the Illinois Central Railroad Company are defendants, and the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:—

Interrogatory first. State your name, age, occupation, and residence.

Answer. My name is John F. Farnsworth. I am thirty-seven years of age. I am an attorney-at-law. I reside at St. Charles, Illinois.

2. Interrogatory second. Are you acquainted with any of the parties of this suit? If yea, with which of them and how long you have *have* been *been* so acquainted?

Answer. I am acquainted with the defendants. I have known them about fourteen years; that is, the Herringtons. I have known the railroad company since it was a corporation. I do not know the complainant.

3. Interrogatory third. Have you any knowledge of a Sheriff's certificate of sale of property purchased by William H. Adams, and bearing date the 6th day of March, 1855, having been assigned or

delivered at any time to Augustus M. Herrington, one of the defendants? If yea, state when and upon what consideration, and for *for* what purpose, and by whom such certificate was so assigned or delivered to him.

Answer. I have knowledge of such a certificate and its transfer to Herrington; I can't remember the exact time when it was delivered to Herrington, but it must have been, I think, either the latter part of January or the fore part of February, 1856, I can't remember the precise time; the consideration was, which I took for the certificate, was the note of Herrington, of Augustus M. Herrington, of $1278.42, dated March 6th, 1855, and payable the 1st day of September, 1856; it was antedated, with interest at ten per cent.; also his due bill to Farnsworth and Burgess of one hundred dollars and a trifle over, being our fees in the case of Stuart against Herrington; the first note above described was also payable to Farnsworth and Burgess, and was intended to be the amount to be paid to Stuart—the small note was the amount of the fees due Farnsworth and Burgess from Stuart, and intended for that purpose. The assignment upon the certificate was signed by William H. Adams at the time that I delivered it to Mr. Herrington, there were some blanks in the assignment which I filled with the words "A. M. Herrington," "Sixth March," and the last figure 5 in the date of the year; I know of no other purpose for which it was transferred, except the purpose of transferring that title to Mr. Herrington which he stated he desired to obtain.

4. Interrogatory fourth. In whose handwriting is the assignment on such certificate?

Answer. In the handwriting of W. T. Burgess, except the signature.

5. Interrogatory fifth. What representations or statements did Herrington make to you, if any, in order to induce you to deliver to him such certificate or to take such notes?

(Objected to by complainants.)

Answer. At that time I was a member of the firm of Farnsworth and Burgess, practising law in Chicago; Mr. Burgess was not present, I think I was alone; the certificate referred to was in the office; I knew there had been some conversation about selling the certificate to Mr. Herrington, although it was a business over which I had no personal supervision, Mr. Burgess having taken charge of the case of Stuart up to that time. Mr. Herrington stated to me that he had had such conversation with reference to buying the certificate, but stated that he desired time, a further time than the redemption day, to pay for it—that he desired to take an assignment of the certificate rather than redeem in the ordinary mode, as he thought it probably would assist the title or right of the Herringtons to some portions of the real estate described in the certificate; he also stated that the description of one parcel of the land in the certificate was wrong, or that it did not describe land that the Herringtons

had any claim to, that if he was forced to redeem, he could redeem the other parcels and thus leave the plaintiff minus the amount of money bid for that parcel so erroneously described, and he proposed or stated that he would give the notes, and if that arrangement was not satisfactory to the parties interested, he would make it right or satisfactory; I don't recollect the precise language, that is the substance.

6. Interrogatory sixth. Did either yourself or Herrington at that time examine the certificate to see the erroneous description he had spoken of?

Answer. I don't recollect of examining it myself, but I think Mr. Herrington did examine the certificate, and my impression is read some portion of it aloud, but I am not certain of it.

7. Interrogatory seventh. Can you tell, or do you recollect which of the parcels of land described in the certificate he claimed erroneously described?

(Question objected to generally by complainant.)

Answer. I can't tell; I don't remember.

8. Interrogatory eighth. What did you reply to this proposition of Herrington's? and what did you tell him you would do on the subject?

Answer. I think I stated to Mr. Herrington that I had had nothing to do with that case, and knew little or nothing about the business; that Mr. Burgess, my partner, had had charge of that case; that I did not know whether an arrangement of that kind would be satisfactory to the owner of the claim; that I knew nothing about the description of the land myself, as I had never examined it. Upon his replying that, if it was not satisfactory, he would make it right, I consented to the arrangement, he at the time assuring me that he would stand between me and all harm, and make the matter satisfactory to Stewart, if it was not, or Adams, the brother-in-law and agent of Stewart. I am not certain which name he used. Adams had acted as Stewart's agent in the matter. I thereupon took the notes, filled the blanks in the certificate, and delivered the same to Mr. Herrington, as I have before stated.

9. Interrogatory ninth. For what reason, or upon whose suggestion, were two notes given instead of one?

Answer. I think at my suggestion. The only reason that I know of is that I wanted to have the fees sooner than the large note would fall due.

10. Interrogatory tenth. Do you know whether the small note has been paid?

Answer. It was paid.

11. Interrogatory eleventh. When and by whom?

Answer. Shortly afterwards, by Mr. Herrington.

12. Interrogatory twelfth. Do you know what became of the large note? State, if you know.

Answer. I think it has remained in our office ever since. I have it here now, and which is now produced by me.

Here deponent hands to me, the commissioner, to be appended to this, his deposition, the said note, which I have marked "Exhibit A," at the request of defendants' solicitors.

13. Interrogatory thirteenth. At the time of this transaction, in what business, if any, was William H. Adams engaged? and where did he keep his office or place of business?

Answer. I think he was engaged principally in the real estate business; I am not certain where his office was at that time; I think his office was on Clark Street, over Smith's Bank. That is my impression now.

14. Interrogatory fourteenth. Did Adams at any time have his office in rooms occupied by Farnsworth and Burgess? and when, if at all?

Answer. He did in the fall and winter of 1856 and 1857, at 130 Lake Street, Chicago.

15. Interrogatory fifteenth. Are you acquainted with Julius C. Smith? If yea, how long have you been acquainted with him?

Answer. I am; about seventeen years, I think; I think it is about that long ago since we were reading law together in the same town.

16. Interrogatory sixteenth. What is his occupation, and where has been his place of business in this city, if any such he has had during the last two years.

Answer. I think he has been principally engaged in the real estate business during the last two years. His office has been with W. H. Adams, or place of business has been with Adams principally.

17. Interrogatory seventeenth. After you thus delivered to Herrington the certificate, did you inform Adams or Stewart of what you had done? If yea, state when and which of them.

Answer. I did inform Adams within a very few days; I think, at furthest, within a week; I can't tell precisely—afterwards.

18. Interrogatory eighteenth. Did you, at any time after you so delivered such certificate, have any conversation with said Herrington, in behalf of Stewart or Adams, in relation to such certificate or notes? If yea, state when such conversation occurred, and where, and what was said or done between you on the subject mentioned?

(Question objected to by complainant.)

Answer. I did have a conversation; I think it was upon the 5th of March, 1856, at Geneva, in Kane County, at the court-house; I had there received a letter written by Stewart to Farnsworth and Burgess at Chicago, and forwarded to me by Mr. Burgess which I now produce, and ask to have appended to this my deposition as "Exhibit B." I showed the letter from Stewart to Mr. Herrington on that occasion, and at the same time stated to him that, as I was being blamed, and the matter was not satisfactory to Mr. Stewart,

I wished he would fix the matter up. Mr. Herrington stated, I think, that he would do so at once; I think I stated to him that any arrangement he could make with Adams or Stewart would be satisfactory to me. I don't remember anything else that occurred at that time.

19. Interrogatory nineteenth. What was Mr. Herrington's occupation or profession at that time, and where did he reside and do business?

Answer. He was practising law at Geneva, and resided there.

20. Interrogatory twentieth. Do you know whether or not, at the time of that conversation, Herrington was particularly engaged or occupied with business? If yea, state where and what business.

(Question objected to by complainants.)

Answer. Mr. Herrington and myself were then both in attendance on the Circuit Court of Kane County at Geneva, which has and had been since the second Monday of February preceding in session. I don't remember what he was doing. I can't say that Mr. Herrington was in attendance at court like other attorneys when it was in session.

21. Interrogatory twenty-first. Did Herrington state when he would fix the matter up? Was any time fixed upon either by date with reference to his business?

(Question objected to by complainant.)

Answer. According to my best recollection Herrington said he would go into town in a few days, or to Chicago in a few days, or soon, and would see Adams, and arrange the affair satisfactorily—that is all I recollect on that subject; I think that was towards the close of the term; I think the court did not sit much longer.

22. Interrogatory twenty-second. Did you make any, and, if any, what reply to this answer or promise of Herrington's?

(Question objected to by complainant.)

Answer. I don't recollect any further reply than I have before stated.

23. Interrogatory twenty-third. Do you know how long after this that term of the Kane County Court continued? If so, state.

Answer. I do not know, but think probably about a week, perhaps longer, perhaps shorter.

24. Interrogatory twenty-fourth. Do you know whether or not said Herrington did come into Chicago, and have an interview with said Adams? If so, when, where, and who was present?

Answer. He did come into Chicago, and had an interview with Adams at our office; I cannot state the exact time; I think it was not long afterwards, however. I cannot state who else was in the office besides myself at the time; I was in the office, but did not hear much of the conversation.

25. Interrogatory twenty-fifth. Do you know what was the subject of that conversation? If so, state.

(Question objected to.)

Answer. I do; it was the subject of this certificate and its assignment, and the arrangement I had made with Mr. Herrington.

26. Interrogatory twenty-sixth. What was said or done at that time between them on the subject, or to, or by you, as far as you heard or observed?

(Question and each part of it objected to by complainant.)

Answer. I don't know, I did not hear their conversation; when Mrs. Herrington came in the office, I said to him and Adams that I wished they would fix that matter up now; I then went on and repeated substantially the conversation which I had with Herrington at the time of the transfer of the certificate; thereupon Herrington and Adams commenced a conversation upon the subject. I left them conversing and went about my own duties; they sat there conversing for some little time when they separated, and Mr. Herrington went out, and I supposed they had arranged it.

27. Interrogatory twenty-seventh. What led you to suppose they had arranged it?

(Question objected to by complainant).

Answer. I don't know of anything that I heard them say distinctly which led me to suppose, the impression may have been made, and probably was, from the fact that I heard no disagreement between them, and from the friendly manner of their separating; this was at that time; I mean this supposition was at that time.

28. Interrogatory twenty-eighth. Did you afterwards say anything or write anything to Herrington with reference to this business, or with reference to said note of $1278 42? If so, when did you first so say anything or write?

(Questions objected to, and each part of it objected to by complainant.)

Answer. I wrote to him on the 27th of September, 1856. I don't recollect of writing to him on any other occasion. I think I talked with Mr. Herrington on another occasion, but I can't recollect when, nor what was said. I wrote the letter now shown me, which is here offered in evidence by the defendants as Exhibit "C".

29. Interrogatory twenty-ninth. Look at the paper now shown you and produced by the defendant, A. M. Herrington, marked Exhibit "D," to be appended to this your deposition. State in whose handwritting is the body of the letter, and in whose handwriting the note at the bottom of it.

Answer. I only know the handwriting of William Stuart by comparison of letters purporting to come from him. This letter purported to come from him, and I suppose it to be his handwriting. The memorandum is in the handwriting of W. T. Burgess.

30. Interrogatory thirtieth. Have you seen this letter marked "D" before? If yea, when did you first see it, and do you know what was done with it?

Answer. I did see the letter before, can't say exactly when. I

think it was enclosed with my letter to Herrington of September, 1856.

31. Interrogatory thirty-one. In whose handwriting is the letter now shown you by the defendant A. M. Herrington, marked Exhibit "E"?

Answer. In the handwriting of W. T. Burgess.

32. Interrogatory thirty-two. Have you any knowledge of a bill in chancery having been filed by the beforementioned Julius C. Smith, with reference to said certificate, or with reference to the subject matter in litigation in this suit? If yea, what do you know on the subject?

(Question objected to by complainant.)

Answer. I know by hearsay that a bill was filed by J. C. Smith; whether I ever saw the bill or not I do not know; I never read the bill. I think I saw a bill which purported to be a bill in which Smith was complainant; it was some time after the bill was filed, but I am not certain.

33. Interrogatory thirty-third. Where do you think you saw such bill, if you saw it at all, and who had it, if any one?

Answer. In the office of Farnsworth & Burgess. I don't know that anybody had it.

34. Interrogatory thirty-fourth. Do you know with whom Smith consulted in relation to such suit, if with any one?

Answer. I don't know that I ever heard him counsel with any one. I supposed Mr. Burgess was his counsel.

35. Interrogatory thirty-fifth. What led you to suppose so?

Answer. Well, I may have heard so, I may have heard Mr. Burgess say so, I may have heard Smith say so, in fact, I think I did. I think I heard them both talk about it after the suit was supposed to be commenced; have heard the matter talked over since with divers persons.

36. Interrogatory thirty-sixth. Where did said Smith have his office or place of business a year ago this fall?

Answer. I think a year ago this last fall; Smith's place of business was with William H. Adams, at the office of Farnsworth and Burgess, 130 Lake Street.

Direct examination closed. J. F. FARNSWORTH.

The further examination of the witness is by consent adjourned to Monday, the 14th day of December next ensuing, at the office of J. F. Farnsworth, 130 Lake Street, in the city of Chicago, at the hour of seven P. M. of said day, dated 9th Dec., 1857.

Monday, Dec. 14th, 1857.

Witness and parties present, examination direct closed, by counsel for defendants.

Cross-examined.

Cross-interrogatory first. What day did you receive the letter alluded to in your answer to the 18 direct interrogatory? Why do

you say you received it on *on* that day, and how long after before you showed it to said Augustus M. Herrington?

Answer. I think I received it on the 5th March, 1856; the envelop which enclosed it was post-marked the 4th of March, which I now have, and it is according to my general recollection of the occurrence; I cannot say precisely how long after I showed it to Mr. Herrington, but it was on the same day.

Cross interrogatory second. How far is Geveya in Kane County, Illinois, from Chicago, and what were then the means of communication between it and Chicago?

(Question objected to by defendants' solicitor.)

Answer. Geneva is about 37 miles from Chicago; the means of communication were by railroad.

Cross-interrogatory third. How many of the defendants then resided in Geneva?

Answer. I cannot tell.

Cross-interrogatory fourth. State the names of any that you know resided there then.

Answer. A. M. Herrington, Charity Herrington, James Herrington, Nathan P. Herrington, Alfred Herrington, and not any others that I know of.

Cross-examination closed.

Re-examined.

Re-interrogatory one. State if any arrangement was made, or agreement between you and the said Herrington, at the time you gave him the said letter on the 5th of March, A. D. 1856, as to when he should come into to Chicago and see W. H. Adams; if not, state what was said between you at the time; if you cannot state what was said, state what substance.

(Question objected to by complainants' solicitor, because the same is not rebutting.)

Answer. I don't recollect of any definite agreement as to the time; but my best recollection is that Mr. Herrington told me that he would come in and see Adams as soon as he could get away from the court, or as soon as court adjourned; and that something was said about my being back at Chicago at such time as he could come in, I can't remember what; I desired Mr. Herrington to come in and attend to it as soon as he could. J. F. FARNSWORTH.

Sworn to before me this 14th day of December, A. D. 1857.

JNO. W. MAGILL,
U. S. Commis'r Nor. Dist. Ills.

United States, Northern District of Illinois, ss.

I, John W. Magill, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under and by virtue of the acts of Congress, do hereby certify that the foregoing deposition was taken before me in accord-

ance with an order entered upon the records of said Circuit Court, and also by the agreement of the respective parties. And I further certify, that on the said ninth and fourteenth days of December, Anno Domini one thousand eight hundred and fifty-seven, I was attended by Messrs. Goodrich, Farwell & Smith, solicitors for said defendants, and by W. T. Burgess, Esquire, and on H. Higgins et al., solicitors for complainant, and by the witness, who was of sound mind and lawful age, and the witness having been by me carefully examined and cautioned and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same to the court, for which it was taken; I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause; and I also further certify that the paper writings attached hereto and marked respectively, Exhibits A, B, C, and D, are the identical papers referred to by the witness in his foregoing deposition.

In testimony whereof I have hereunto set my hand this 5th day of January, A. D. 1858. JNO. W. MAGILL,
United States Commissioner for the
Northern District of Illinois.

This is the paper-writing "Exhibit A" handed to me by deponent, Farnsworth. JOHN W. MAGILL, U. S. Com.

$1278 42. Chicago, March 6th, 1855.

On the first day of September, eighteen hundred and fifty-six, for value received, I promise to pay Farnsworth & Burgess, or order, twelve hundred and seventy-eight dollars and forty-two cents, with interest at ten per cent., it being for money actually loaned.

A. M. HERRINGTON.

"B."

Binghampton, February 25, 1856.

Messrs. Farnsworth & Burgess.

Gentlemen: I was greatly surprised to receive a letter from Wm. H. Adams, of Chicago, this morning, informing me that Mr. Burgess, of your firm, had settled with Herrington and taken his *note* payable in September next, for the amount of the execution in my favor. This proceeding was entirely unknown to, and unauthorized either by Mr. Adams or myself, and will not be *sanctioned* or *recognized*—a proceeding entirely foreign to your instructions, your obligations, and your duty, as your letters retained will show. The sale took place, I believe, about the middle of February last, and I had relied on the amount of the sale-money for purposes for which I had appropriated it, as soon as the time for redemption expired; I

shall expect it, and demand it accordingly, and hold you responsible for it, deducting your commission on the amount *collected, not to be collected;* I shall so inform Mr. Adams and Mr. Herrington.

I must take the liberty of saying that you have throughout this whole matter manifested a spirit of impatience and a course of conduct that I did not recognize as proper or usual when I practised law in Chicago, or have since.

I have, fortunately, all your letters on file, and Mr. Adams as a witness in the proceedings.

Respectfully, WM. STUART.

Mr. Adams informs me that the ground of settlement was given that the description of the property was wrong, and on this false statement and assumption the strange and unauthorized settlement was made. Mr. Adams informs me that the description is *right.*

W. S.

This is the paper "Exhibit B" referred to by deponent Farnsworth. JNO. W. MAGILL, U. S. Com.

"C."

A. M. Herrington, Esq. Chicago, Sept. 27th, '56.

Dr. Sir: Mr. Stewart is very urgent in regard to his money due from you, and we are receiving a good deal of counsel, and some inquiry occasioned by this matter, when we acted entirely for your accommodation, and upon your promise that all should be right, and that, if Stuart or Adams were not satisfied, you would satisfy them. Your note is now considerably over due, and we have to stand the blame. Now, will you immediately pay it, and thus save us from further trouble in the matter? Inclosed with this is a letter we have just rec'd from Stuart, which please return to us. We may rely upon your doing justice in this matter as you assured us you would.

Truly yours, FARNSWORTH & BURGESS.

This is the paper, exhibit, or document produced and offered in evidence by defendants as "Exhibit C."

JNO. W. MAGILL, U. S. Com.

Binghampton, Sept. 27th, 1856.

Messrs. Farnsworth and Burgess.

Sirs: I am greatly surprised and disappointed to learn from Mr. Wm. H. Adams this morning that Herrington continues to refuse or neglect to pay the note which was taken from him, and which, according to its terms, was due Sept. 6th. The certificate of sale was given up without Mr. Adams' knowledge and against his consent; he signed the certificate in blank on the condition that it might be given up when the *money* was *paid*, and not otherwise. Between all parties I am thus wrongfully and greatly to my inconvenience kept out of the money. I have written to Mr. Adams to employ at once some

able and honest lawyer, if he has the good luck to find one, to take immediate measures to settle this matter. I have been shamefully treated, and my confidence and that of Mr. Adams have been utterly abused. If, I am compelled to go to Chicago again on this business, I shall make an expose of the whole affair.

Yours, &c., WM. STUART.

Read and return to us. Yours, &c.,

BURGESS.

This is the paper marked Exhibit "D," referred to by witness Farnsworth; the introduction of the same as evidence is objected to by compl't. JNO. W. MAGILL, U. S. Com.

"E."

Chicago, Oct. 23d, 1856.

A. M. Herrington, Esq.,

Dr. Sir: We are under the necessity, owing to Mr. Wm. Stuart's refusal to ratify the arrangement made by one Mr. F. with you about the certificate of sale of what is called the Laflin property, to refund you the money you paid Mr. F. about the 28th January last, $108.34, with interest now amounting to $116.46.

If you will advise us how we shall remit it to you, or draw on us for the amount, we will duly honor your advices or draft.

Yours, &c. FARNSWORTH & BURGESS.

This is the letter marked exhibit "E," and referred to by the witness Farnsworth. JNO. W. MAGILL, U. S. Com.

Opened Jan'y 18th, 1858, for Alex. Burgess, Esq.

WM. H. BRADLEY, Esq.

The deposition of John Van Horn read in the words and figures following, to wit:—

United States, Northern District of Illinois, ss.

Be it remembered, that on this day, to wit, the twenty-second day of January, A. D. 1858, personally appeared at my office, No. 47 Clark Street, in the city of Chicago, before me, James T. Ely, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., John Van Horn, to testify, and the truth to say, on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States in and for the Seventh Circuit of Illinois, in the Seventh Circuit, wherein Walter Laflin is the complainant, and Augustus M. Herrington, Charity Herrington, Nathan P. Herrington, Alfred Herrington, Jane Herrington, James Herrington, Charity Herrington the younger, Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, and the

Illinois Central Railroad Company are the defendants; and the said witness being of lawful age, and he having been by me first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:—

Interrogatory first. What is your name, age, occupation, and where do you reside?

Answer. My name is John Van Horn, aged fifty years; my occupation since I have been in this country has been civil engineering and surveying, and latterly I have been a real estate agent; I reside in the West Division of Chicago.

Interrogatory second. Have you had any experience in surveying in this city? If so, to what extent, and how long?

Answer. I have had such experience. In 1849 I was elected and qualified as county surveyor for Cook County. At the time when the county surveyor had exclusive authority to make surveys in the city of Chicago, as well as in the county of Cook, I served three successive terms of two years each as county surveyor, and while acting as such I had many occasions to make surveys in the city of Chicago, for the city, for railroad corporations, and for individuals.

Interrogatory third. Are you acquainted with the location of the northwest fractional quarter of section No. 22, in township No. 39 north, of range 14 east of the third principal meridian? If so, state where is the west line of that fractional quarter.

Answer. I am acquainted with it. The west line is situated in the centre of State Street.

Interrogatory fourth. Have you ever had occasion to run out the west line of that fractional quarter section? and if so, when, and for what purpose?

Answer. I have had such occasion, and have run out the line very often. I first ran it out in October, 1850.

Interrogatory fifth. Do you know whether State Street is a public street in the city of Chicago? State what you know on the subject.

Answer. Yes, sir; it is a public street, and I never have known it any other way.

Interrogatory sixth. Is State Street as it runs on the west of this fractional quarter section used as a public street?

Answer. It is and always has been ever since I have been in the city of Chicago.

Interrogatory seventh. How wide is State Street opposite that quarter section?

Answer. It is sixty-six feet. It is designed to be so, and I have generally found it so.

Interrogatory eighth. Does any part of that quarter section lie west of State Street?

Answer. There is no part of it west of State Street.

JOHN VAN HORN.

Cross-interrogatory by Counsel for Defendant.

How many public streets are there across the tract of land in controversy in this suit, running north and south, between the west line and the lake shore?

The witness, Van Horn, not being able to give satisfactory answer to this interrogatory, the interrogatory was waived by the counsel for the defendant.

United States, Northern District of Illinois, ss.

I, James T. Ely, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing deposition and the fact is, that the same was taken by the request and consent of the parties.

I further certify, that on the 22 day of January, A. D. 1858, I was attended by William W. Farwell, solicitor for the defendants, and by J. F. Farnsworth, Esq., solicitor for the complainant, and by the witness, who was of sound mind and lawful age, and the witness having been by me carefully examined and cautioned, and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same by hand to the court, for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my seal, this twenty-second day of January, A. D. 1858.

[L. S.] JAMES T. ELY,
United States Commissioner,
Northern District of Illinois.

Opened for Mr. Farwell, June 7th, 1858.

W. H. B., Clerk.

The deposition of Julius G. Lumbord reads in the words and figures following, to wit:—

United States, Northern District of Illinois, ss.

Be it remembered, that on the twenty-sixth day of February, A. D. 1858, personally appeared before me, at my office, No. 47 South Clark Street, in the City of Chicago, before me, James T. Ely, a Commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under the laws of the United States, to take affidavits, acknowledgments of bail, &c., Julius G. Lumbord, to testify and the truth to

say on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States in and for the Northern District of Illinois, in Chancery, wherein Walter Laflin is complainant, and Augustus M. Herrington, Charity Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Jane Herrington, Charity Herrington the younger, Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, and the Illinois Central Railroad Company, are the defendants.

And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:—

My name is Julius G. Lumbord. I am about 27 years of age. I reside in Chicago. My profession is that of an attorney at law.

Interrogatory first. Are you acquainted with the parties to this suit? If so, which of them?

Answer. I know Walter Laflin by sight, and am acquainted with Augustus M. Herrington, one of the defendants. I think I am not acquainted with any other of the defendants.

Interrogatory second. Where were you in the summer and fall of 1856? If in any person's employ, where and what was your employment? If you had a place of business, state where.

Answer. I was in Chicago. I was in the employ of Farnsworth & Burgess. I was their attorney's clerk. The office was situated at 130 Lake Street.

Interrogatory third. Was you present at the office of Farnsworth & Burgess at any time in the fall of 1856, when the said Augustus M. Herrington, one of the defendants, had a conversation with William T. Burgess in relation to a certain note? If so, state what was said and done on the occasion referred to.

(This interrogatory is objected to by solicitors for the complainant.)

Answer. I was present at a conversation between Augustus M. Herrington and Mr. Burgess. I think in the fall of 1856. I cannot remember the month, but am confident it was along in the fall some time. At that time Mr. Herrington placed a quantity of gold upon the table and said he wanted to take up that note, or words to that effect. I do not remember the language. I think Mr. Burgess replied that he had nothing to do with that note. I do not pretend to give the language. I think he said it was in Mr. Farnsworth's charge. Mr. Herrington then asked if the note was in the office. Mr. Burgess either said it was or that he presumed it was. Mr. Herrington then said I tender you the money for it, and (speaking to me) I call upon you to witness it.

Interrogatory fourth. Who was present, and was there a search made for said note in said office at the time referred to?

Answer. I remember of no one else being present. There was no search made for it at that time.

Interrogatory fifth. Did said Burgess make any reply to said Herrington at the time of the tender referred to by you? If so, what?

Answer. He said something to this effect, if I remember, at the time the tender was made: That he had a right to make a tender if he wished. It amounted to a refusal to take the tender.

Interrogatory sixth. Did the said Burgess receive the said money?

Answer. He did not.

Interrogatory seventh. State what amount of money was there, from what you saw and heard.

Ans. I know nothing about the amount except from what Mr. Herrington said, and as I could judge from the size of the pile, I got the impression from those two things that there was about twelve hundred dollars there.

Interrogatory eighth. What note was referred to upon this occasion?

Ans. Well, I understood it to be a note due to Mr. Stuart, of New York State. I don't know whether the note was payable to him or not. I got this impression from what was said then, or at other time.

Interrogatory ninth. State if you know from what was said upon the occasion, who the note was given by.

Ans. It was a note given by Augustus M. Herrington. I do not know whether I learned it from what was said or not.

Cross-interrogatories by Solicitors for Complainant.

Cross-interrogatory first. Did or not Mr. Burgess say that he had had nothing to do with the note, and would have nothing to do with it?

(Objected to by solicitor for defendants.)

Ans. I cannot remember distinctly, but I think he used some words to that effect.

Cross-interrogatory second. Did not Mr. Burgess say to Mr. Herrington that he might make a tender if he had a mind to, but he, Burgess, had no authority to receive any money?

Ans. He either said that he might make a tender if he had a mind to, or that he had a right to make a tender. I cannot remember the language. I do not remember his saying he had no authority to receive it.

Cross-interrogatory third. Did he not say that it was of no use to make a tender to him, or words to that effect?

Ans. I can remember no more than I have already said in regard to that.

Cross-interrogatory fourth. Did you not, from what was said by him then, understand that he declined receiving the money because he had no authority from any one to do so?

Ans. No, I supposed he had authority; but I do not know whether

I received this impression from what was said there, or from other facts that came to my knowledge while I was in the office.

Cross-interrogatory fifth. Is your remembrance of that conversation so very distinct, so much so that you can clearly separate what you heard said at that time, from what you may have heard said at other times about the same matter.

Ans. I cannot, except with regard to the main features of that conversation.

Cross-interrogatory sixth. What do you mean by the main features of the conversation?

Ans. I refer to the tender of the money by Mr. Herrington, which I remember distinctly, and Mr. Burgess refused to accept the tender. Those are distinct facts which I remember well. My recollection of the language is not distinct, and I speak from impressions that the conversation left upon my mind.

Cross-interrogatory seventh. Do you recollect of Burgess assigning any reason why he refused to receive the money.

Ans. I do not recollect of his assigning any reason while Mr. Herrington was present. I think Mr. Burgess said that he had nothing to do with the note, that it was in Mr. Farnsworth's charge. This was while Mr. Herrington was present.

Interrogatory eighth. Did not the words used by him at the time, "It is no use to make a tender to me," convey the impression to you that Mr. Burgess had nothing to do with the note?

Ans. I cannot remember that he used such language, and I never had the impression that he had nothing to do with the note. I never knew that he had anything to do with the note, but knew that he was in partnership with Mr. Farnsworth, and this gave me the impression that he had something to do with the note.

J. G. LUMBORD.

United States, Northern District of Illinois, ss.

I, John A. Bross, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing deposition was by consent of the parties, and by virtue of an order of court on file in the court, in the papers in this cause, referring the testimony to me to be taken in this cause.

I further certify that, on the twenty-sixth day of February, A. D. 1858, I was attended by W. W. Farewell, Esq., solicitor for the defendants, and by William T. Burgess, Esq., solicitor for the complainant, and by Augustus M. Herrington in person, and by the witness, who was of sound mind and lawful age; and the witness having been by me carefully examined, and cautioned and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence; and I have retained the said deposition in my possession for

the purpose of transmitting the same by hand to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have subscribed my name and affixed my seal the twenty-sixth day of February, A. D. 1858.

[SEAL.] JAMES T. ELY, U. S. Commissioner,
Northern District of Illinois.

Endorsed: Filed Feb'y 26th, 1858.
WM. H. BRADLEY, Clerk.

The deposition of Thomas Allen reads in the words and figures following, to wit:—

United States, Northern District of Illinois, ss.

Be it remembered, that on the twenty-sixth day of February, A. D. 1858, personally appeared before me at my office, No. 47 South Clark Street, in the city of Chicago, before me, James T. Ely, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under the laws of the United States to take affidavits, and acknowledgments of bail, &c., Thomas Allen, to testify, and the truth to say, on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States in and for the Northern District of Illinois, in chancery, wherein Walter Laflin is the complainant, and Augustus M. Herrington, Charity Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Jane Herrington, Charity Herrington the younger, Thaddeus Herrington, and the Illinois Central Railroad Company are the defendants.

And the said witness, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:—

My name is Thomas Allen; I reside in Chicago; I am 45 years of age; I am in the real estate business.

Interrogatory first. How long have you been engaged in the real estate business in Chicago?

Ans. About four years.

Interrogatory second. Are you acquainted with the situation and value of the northwest fractional quarter of section No. 22, in township 39, range 14, Cook County? If so, how long have you been acquainted with it?

Answer. I know the land; I have been more particularly acquainted with it for the last four years, since I have been in the real estate business; I am acquainted with its value.

Interrogatory third. Are you acquainted with that part of said

quarter section running from State Street to the lake, and comprising about thirteen acres, and which is known as the Herrington tract?

Answer. I am.

Interrogatory fourth. What, in your opinion, was the value of that property on the sixth day of March, 1855?

(Objected to by solicitor for complainant.)

Answer. The several lots on each front were worth 100 dollars a foot front. There are seven fronts: One on State Street, two on Wabash Avenue, two on Michigan Avenue, and two on Indiana Avenue. I think there is about six hundred feet in each front.

Interrogatory fifth. What in your opinion was the value of that property on the sixth of March, 1856?

(Objected to by solicitor for complainant.)

Answer. One hundred and twenty-five dollars per front foot.

Cross-interrogatories by Solicitor for Complainant.

Cross-interrogatory first. Are your estimates cash or on time?

Answer. My estimates are on one-quarter down, and the balance in one, two, and three, interest annually.

Cross-interrogatory second. How do you identify this property?

Answer. I know it as the property contested between Matthew Laflin and the Herrington heirs. It has been pointed out to me by Mr. Laflin as being the property.

Cross-interrogatory third. Are not your estimates based upon a good title to the property?

Answer. They are.

Cross-interrogatory fourth. Whilst this litigation was pending between Matthew Laflin and the Herrington heirs, what was the title of the Herrington heirs to the property generally considered to be worth, if you know?

(Objected to by solicitors for defendants.)

Answer. I don't know.

THOMAS ALLEN.

United States, Northern District of Illinois, ss.

I, James T. Ely, a commissioner appointed by the Circuit Court of the United States in and for the Northern District of Illinois, in the Seventh Circuit, under and by virtue of the acts of Congress, do hereby certify that the foregoing deposition was taken by the consent of the parties, and by virtue of an order of court on file in the papers in this cause, referring the testimony in this cause to be taken before me.

I further certify, that on the twenty-sixth day of February, A. D. 1850, I was attended by William T. Burgess, Esq., solicitor for the complainant, and by W. W. Farwell, Esq., solicitor for the defendants, and by Augustus M. Herrington in person, and by the witness, Thomas Allen, who was of sound mind and lawful age, and the wit-

ness having been by me carefully examined and cautioned, and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, also subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same by hand to the court for which the same were taken.

I further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my seal this twenty-sixth day February, A. D. 1858.

[SEAL.] JAMES T. ELY,
U. S. Commissioner Northern District of Illinois.

Opened for def'ts' attorney June 7th, 1858.
WM. H. BRADLEY, Clerk.

The transcript of the record in the case of Julius C. Smith against A. M. Herrington and others, reads in the words and figures following, to wit :—

To the Honorable John M. Wilson, Judge of the Cook County Court of Common Pleas.

In Chancery sitting.

State of Illinois, County of Cook, ss.

Your orator, Julius C. Smith, humbly complaining, shows unto your honor that, as your orator is informed and verily believes, one William Stuart, on the ninth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, at a term of the Circuit Court then being holden in and for said county, by the judgment and consideration of the said court, recovered against James Herrington, then in life, since deceased, six hundred and forty-six dollars and seventy-two cents for his damages, and also costs of suit, which judgment will more fully and at large appear on reference to the records of said court, and to which for greater certainty your orator prays reference may be had.

And your orator further shows, upon his information and belief, unto your honor, that the said judgment still remaining in full force, not reversed, vacated, or satisfied, and the said James Herrington being still in life on the ninth day of September, 1837, and within one year after the rendition of said judgment, the said William Stuart caused to be issued out of said Circuit Court an execution upon said judgment to the sheriff of Kane County, that being the county wherein said defendant was served with process in the original suit, and where he resided at the time said execution was issued, which execution was afterwards received by said sheriff during the life thereof, and upon the return day thereof, and afterwards by him returned that he could find no property of the defendant whereon to

levy, and with such return thereon endorsed duly filed in the office of the clerk of said court, as by reference to the records of said court will more fully and at large appear.

And your orator further shows, upon his information and belief, that afterwards, and somewhere about the year , the said James Herrington departed this life, intestate, at his residence in said Kane County in this State, leaving Charity Herrington, his widow, and Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Jane Herrington, Charity Herrington, Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, children and heirs at law, surviving. That afterwards letters of administration were by the Probate Court of Kane County granted and issued, in due form of law, to said Catherine Herrington, who since has been and now is administratrix of all and singular the goods, chattels, rights, credits and effects were of the said James Herrington, deceased, at the time of his decease.

And your orator further shows, upon his information and belief, that the said James Herrington died seized of all that certain tract of land situate in the county of Cook aforesaid, and described as follows, to wit: All that part of the northwest fractional quarter of section number twenty-two (22), in township number thirty-nine (39) north, of range number fourteen (14) east of the third principal meridian, bounded north by that part of said fractional quarter section conveyed by James Herrington and his wife to John S. Wright, by deed dated the third day of December, A. D. 1834, and recorded in the recorder's office of said county, in book B of deeds, on page 295; and on the west by the west line of said fractional quarter section; and on the south by land conveyed by James Herrington and wife to Truman G. Wright, by deed dated the third day of June, 1835, recorded in said office, in book H of deeds, on page 118; and on the east by the east line of said fractional quarter section, being the shore of Lake Michigan.

And your orator further shows unto your honors, upon his information and belief, that on the 13th day of October, A. D. one thousand eight hundred and fifty-four, the said William Stuart caused to be served upon the said Catherine Herrington, so then being administratrix of the estate of said James Herrington, deceased, as aforesaid, a notice in writing of the existence of said judgment, that the same had been by him recovered against the said James Herrington during his lifetime, and still remaining in full force, and that he should three months after the *the* service of said notice upon her sue out of said clerk's office execution upon said judgment against the lands and tenements which were of the said James Herrington at the time of his death, and whereof he died seized.

That afterwards, and on the 17th day of January, in the year one thousand eight hundred and fifty-five, more than three months having elapsed after the service of said notice, and more than one year having elapsed after the death of said James Herrington, the said

William Stuart caused to issue out of said Circuit Court an alias execution in due form of law, under seal of the court of Cook County, to the sheriff of Cook County, commanding him that of the lands and tenements which were of James Herrington, deceased, at the time of his death, he should cause to be made the said sum of six hundred and forty-six dollars and seventy-two cents, in form aforesaid recovered by said Stuart against said Herrington, and his costs of suit, and to make return thereof in ninety days from the date thereof.

And your orator further shows unto your honors, that James Audren, then being sheriff of said county, and having said writ, caused said premises herein above described to be duly advertised for sale on the sixth day of March, A. D. one thousand eight hundred and fifty-five, at ten o'clock in the forenoon of that day, at the north door of the court-house in the city of Chicago, at which time and place William H. Adams bid said premises off for the amount of one thousand three hundred and seventy-eight dollars and forty-two cents, being the highest sum bidden for the same, and no one offering any more, that the same was struck off in four separate parcels, amounting in the whole of said sum of money, and that thereupon the said sheriff executed duplicate certificates of sale, one of which he delivered to the said William H. Adams, and the other of which he caused to be filed in the recorder's office, as your orator is informed and believes, and returned said execution satisfied in full, by indorsement of the attorneys of plaintiff to that effect.

And your orator further shows that about nine or ten months after said sale took place, one William T. Burgess informed the said William H. Adams that Augustus M. Herrington, one of the said heirs of the said James Herrington, was desirous of redeeming said lands from said sale, but in order to protect the title of said heirs to said land was desirous of taking an assignment thereof; that thereupon to enable said Burgess to receive the money that would be necessary to redeem said premises, and to make an assignment of said certificate thereupon to such person as the said Augustus M. Herrington might select, the said William H. Adams endorsed upon the said certificate of sale which he had received from said sheriff a writing purporting to be an assignment thereof, but without mentioning therein the name of the assignee, and signed it and left it with said Burgess, with instructions to pass the same over to said Herrington on the payment of said money, and upon no other terms and conditions.

And your orator further shows that, as he is informed and believes, that the said Wm. T. Burgess left said paper so endorsed with said writing in the office occupied by him and one John F. Farnsworth, his law partner, and that in the absence of said Burgess, and without his knowledge and consent, the said Augustus M. Herrington went to said John F. Farnsworth on or about the 25th day of January, A. D. 1856, and by false representations that the land sold by the

said sheriff, had not been correctly described, induced him to take a note for $1278.42 payable to Farnsworth and Burgess on the 6th day of September, A. D. 1856, with ten per cent. interest, and a small sum of money of about one hundred dollars, and delivered to him said certificates with said writing endorsed, but your orator states that he was informed and believes said Adams was not informed that any money had been paid, and was not aware that such had been the case until about the first of October, 1856, and that your orator was not aware of the same until after the assignment of said certificates to him as hereinafter stated.

And your orator further showeth unto your honor that as soon as said Adams was aware of said transaction, he distinctly and unequivocally repudiated it, and has never received said money nor said note, and said Herrington was immediately informed, and before the time of redemption had expired, that the said note would not be received, and that if he desired to redeem said land from said sale that he must pay the money necessary therefor, and that the delivery of the said certificate to him was without authority and against the wish of said Adams.

And your orator further shows that the said Augustus M. Herrington, or any other heirs or any grantee of said James Herrington, did not within one year after said sale, or at any time since, pay to said Adams or to said sheriff, who made said sale, the money necessary to redeem said land, or any part thereof, for sale, nor hath the said Augustus M. Herrington ever paid or offered to pay said note.

And your orator further shows that he is informed and *and* believes the said Herrington, at the time he procured said certificate from said Farnsworth, expressly stated and agreed that if the arrangement then made between him and said Farnsworth was not satisfactory, the said certificate of sale should be returned to said Adams to be held by him the same as though no such arrangement had taken place, and said statement was one of the inducements that led the said Farnsworth to deliver to said Herrington the said certificate; and your orator further shows that he is fearful the said Herrington has caused the said blank in said writing endorsed upon said duplicate certificate to be filled up either with his own name or that of some third person, with the intent thereby to claim thereunder the said land and obtain in the name of such person a sheriff's deed for said premises to the person whose names may be therein inserted.

And your orator further shows unto your honor that the said writing purporting to be an assignment of said certificate by said Adams, if filled up with the name of any person or assignee thereof, is void and of none effect, as well by reason of the fraudulent manner in which the same was obtained as herein above set out, as also that it is in violation of the statutes of this State, chapter 44, entitled Frauds and Perjuries, of the revised statutes, and your orator insists upon the said statute as a bar to any right or interest that he,

the said Herrington, or any other person or persons, may set up touching the said lands thereunder.

And your orator further shows unto your honor, upon his information and belief, that at the time of the said sale of said premises under said execution, the title thereof was involved in doubt and litigation, and that no other person than said Adams, as he is advised, would, in consequence of said doubts and litigation, bid off the said property, or any part thereof, under said execution; that the said heirs of said Herrington, or some of them, well knew before said sale that said property was about to be exposed for sale under said execution, and yet neither bid themselves upon it or procured or attempted to procure others to do so, but were then content, as it seems to your orator, to allow said property to be sold under said execution for the amount thereof, that if any sacrifice of said property under said execution has taken place, it has been wholly owing to wilful neglect and laches on the part of the said heirs in not redeeming.

And your orator further shows unto your honor, that on the 9th day of October, A. D. 1856, by deed of that date, the said William H. Adams, for a valuable consideration paid and agreed to be paid by your orator, assigned said certificate of sale to your orator, and released and conveyed said land therein described to your orator, and authorized your orator to receive a deed under sale thereof from said sheriff, which said assignment was by him duly acknowledged and filed for record the tenth day of October, 1856, as by the said assignment now in your orator's possession ready to be produced and proved as this court shall direct, will more fully and at large appear.

And your orator further shows unto your honor, as he is informed and verily believes, the said James Andrew hath departed this life, and that James S. Beach, the coroner of said county, hath succeeded to him, and is now, by virtue of the statute, acting sheriff of said county, and that Fayette A. Buckley acted as deputy of said James Andrew in making said sale; and your orator further shows that as he is advised and verily believes, he is now well entitled to said lands and premises, to have and receive from the sheriff of said county, or the proper officer, a conveyance thereof to him in fee, conveying all the right of said James Herrington at the time of his decease therein, and that the said writing endorsed upon said certificate, and signed by said Adams, tends to cast doubts and a cloud upon your orator's title to said lands, and should be removed by the decree of this court.

And your orator further shows unto your honor that he has caused application to be made to the said James S. Beach, coroner and sheriff of said county, and to F. A. Buckley, deputy as aforesaid, for a deed under the said sale, but they refuse to make the same in consequence of your orator's inability to produce the said duplicate certificate of sale issued to said Adams.

And your orator further shows that, as he is advised, said paper

writing endorsed upon said certificate, signed by said Adams, hath not been filed for record in the recorder's office for said county.

And your orator further shows, that he had well hoped said Augustus M. Herrington would have given up and surrended said certificate of sale, and ceased to make any claim under and by virtue of the same and the writing endorsed thereon, to said lands and premises, but now so it is, may it please your honor, the said Herrington, combining and confederating with divers persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted herein, with proper and apt words to charge them how to injure, vex, and harass your orator in the premises neglects so to do, and claims that he is well entitled to said certificate by virtue of said endorsement, and to receive a deed of said lands by virtue thereof, all of which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong, injury, and prejudice of your orator in the premises.

In consideration whereof, and for as much as your orator is remediless in the premises at and after the strict rules of the common law, and can only have relief in a court of equity, where matters of this sort are properly cognizable and relievable, to the end therefore, that the said Augustus M. Herrington, James S. Beach, and Fayette A. Buckley, Charity Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington Jane Herrington, Charity Herrington the younger, Thaddeus Herrington, Mary Herrington, Margaret Herrington, and Charles Herrington, defendants in this suit, may without oath answer the bill, their answer under oath being expressly waived.

That the said Herrington may be required to give up and surrender to your orator the said certificate of sale, so that the said writing thereon endorsed may be cancelled, and your orator retain and have possession of the same.

That the said Herrington may be enjoined and restrained from placing upon the records of said county said writing endorsed upon said certificate, and from filling up the blank therein contained with the name of any person whomsoever, and from setting up or insisting upon any claim to said lands and premises thereunder, or demanding or receiving, either in his own name, or causing it to be done in the name of any other person, any deed of said lands or any part thereof under said certificate of sale and writing thereon, endorsed from the said acting sheriff or other officer authorized to make the same until the further order of the court, and that such injunction be made perpetual.

And that the said sheriff may be directed to make a deed of said land to your orator under said sale, and that the said James S. Beach and the said Fayette A. Buckley may be enjoined from making any deed of said premises under said sale to any other person or persons until the further order of the court, and that such injunction be made perpetual.

May it please your honor to grant your orator process of summons out of and under the seal of this honorable court, to the sheriff of the proper county, to summon the said Augustus M. Herrington, James S. Beach, coroner, ex-officio sheriff, and Fayette A. Buckley, and said other above named defendants, to appear and answer this bill, and to attend to, abide by, and perform the order and decree of the court in the premises.

And process of injunction against said defendants respectively as herein above prayed for. And your orator will ever pray, &c.

JULIUS C. SMITH.

State of Illinois, county of Cook, ss.

Julius C. Smith being duly sworn, deposes and says, that he has read the above and foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon his information and belief, and as to those matters he believes it to be true.

JULIUS C. SMITH.

Sworn to and subscribed before me this 11th day of October, A. D. 1856. WALTER KIMBALL, Clerk.

And afterwards, to wit, on the 5th day of January, A. D. 1857, said day being one of the days of the January Term of said court, the following, among other proceedings, were had in said court, and entered of record, to wit:—

Copy of an order entered of record in the Cook County Court of Common Pleas, January 5th, 1857, in said cause.

JULIUS C. SMITH
vs.
AUGUSTUS M. HERRINGTON, JAMES S. BEACH, et al. } Bill.

And now come Farnsworth & Burgess, complainant's solicitors, and withdraw their appearance as solicitors for the said complainant, and thereupon the said complainant being three times solemnly called, comes not, nor does any person for him. It is therefore ordered by the court that the bill of complaint in this cause be dismissed at the costs of said complainant without prejudice to his rights in his said bill contained.

State of Illinois, Cook County, ss.

I, Walter Kimball, Clerk of the Cook County Court of Common Pleas within and for the county aforesaid, do hereby certify that the above and foregoing is a true copy of a bill and order dismissing the suit, wherein Julius C. Smith is complainant, Augustus M. Herrington, James S. Beach, and others, are defendants.

In witness whereof, I hereunto set my hand and affix the seal of said court at Chicago, in said county, this 13th day of [SEAL.] February, A. D. 1858.

WALTER KIMBALL, Clerk.

The deed in the Illinois Central Railroad Company reads in the words and figures following, to wit:—

This indenture, made this sixteenth day of October, A. D. eighteen hundred and fifty-six, between Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Mary Tuthill (formerly Mary Herrington), Thaddeus Herrington, and Emily Herrington, wife of the said Augustus M., and Almira Herrington, wife of the said Nathan P., and Mary Herrington, wife of the said James, and Sylva Herrington, wife of the said Alfred, and Joshua Tuthill, husband of the said Mary Tuthill, all of the county of Kane, State of Illinois, parties of the first part; and The Illinois Central Railroad Company, party of the second part—witnesseth, that the said parties of the first part, in consideration of the sum of nineteen thousand dollars in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, convey, and confirm unto the said parties of the second part and to its heirs and assigns forever fifty-four fifty-*fith* parts of the following piece or parcel of land situate in the county of Cook and State of Illinois, and described as follows, namely: A part of section of twenty-two (22), in township No. thirty-nine (39) north, of range fourteen (14) east of the third principal meridian, and within the city of Chicago;

Beginning at a point fifty feet west of the centre line of the Illinois Central R. R. main track and on the line of land formerly belonging to Giles Spring, and five hundred and eighty-four $\frac{50}{100}$ feet ($584\frac{50}{100}$) east of the east line of Michigan avenue, running thence northerly parallel with the railroad line to a point four hundred and sixty-seven $\frac{50}{100}$ feet ($467\frac{50}{100}$) east of the east line of Michigan avenue, thence east to Lake Michigan, thence southerly with the lake to a point due east of the place of beginning, thence west of the place of beginning; together with all and singular the hereditaments and appurtenances thereunto belonging, and the remainders and reversions, and the rents, issues, and profits thereof, and all the estate, right, title, and interest of, in, and to the same belonging to the said parties of the first part either in law or equity.

To have and to hold the said fifty-four fifty-*fith* part of all and singular the said premises above bargained and described with the appurtenances unto the said party of the second part and its assigns forever. And the said parties of the first part for themselves, their heirs, executors, and administrators, do covenant, bargain, and agree to and with the said party of the second part and its assigns, that, at the time of the ensealing of these presents, they are well seized of fifty-four fifty-fifth parts of said premises as a perfect and absolute estate of inheritance in law, in fee simple, and have good right and full authority to convey the same as aforesaid, and that the same are free from all other and former grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature

May it please your honor to grant your orator process of summons out of and under the seal of this honorable court, to the sheriff of the proper county, to summon the said Augustus M. Herrington, James S. Beach, coroner, ex-officio sheriff, and Fayette A. Buckley, and said other above named defendants, to appear and answer this bill, and to attend to, abide by, and perform the order and decree of the court in the premises.

And process of injunction against said defendants respectively as herein above prayed for. And your orator will ever pray, &c.

JULIUS C. SMITH.

State of Illinois, county of Cook, ss.

Julius C. Smith being duly sworn, deposes and says, that he has read the above and foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon his information and belief, and as to those matters he believes it to be true.

JULIUS C. SMITH.

Sworn to and subscribed before me this 11th day of October, A. D. 1856. WALTER KIMBALL, Clerk.

And afterwards, to wit, on the 5th day of January, A. D. 1857, said day being one of the days of the January Term of said court, the following, among other proceedings, were had in said court, and entered of record, to wit:—

Copy of an order entered of record in the Cook County Court of Common Pleas, January 5th, 1857, in said cause.

JULIUS C. SMITH
vs.
AUGUSTUS M. HERRINGTON, JAMES S. BEACH, et al. } Bill.

And now come Farnsworth & Burgess, complainant's solicitors, and withdraw their appearance as solicitors for the said complainant, and thereupon the said complainant being three times solemnly called, comes not, nor does any person for him. It is therefore ordered by the court that the bill of complaint in this cause be dismissed at the costs of said complainant without prejudice to his rights in his said bill contained.

State of Illinois, Cook County, ss.

I, Walter Kimball, Clerk of the Cook County Court of Common Pleas within and for the county aforesaid, do hereby certify that the above and foregoing is a true copy of a bill and order dismissing the suit, wherein Julius C. Smith is complainant, Augustus M. Herrington, James S. Beach, and others, are defendants.

In witness whereof, I hereunto set my hand and affix the seal of said court at Chicago, in said county, this 13th day of February, A. D. 1858.

[SEAL.]

WALTER KIMBALL, Clerk.

The deed in the Illinois Central Railroad Company reads in the words and figures following, to wit:—

This indenture, made this sixteenth day of October, A. D. eighteen hundred and fifty-six, between Augustus M. Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Mary Tuthill (formerly Mary Herrington), Thaddeus Herrington, and Emily Herrington, wife of the said Augustus M., and Almira Herrington, wife of the said Nathan P., and Mary Herrington, wife of the said James, and Sylva Herrington, wife of the said Alfred, and Joshua Tuthill, husband of the said Mary Tuthill, all of the county of Kane, State of Illinois, parties of the first part; and The Illinois Central Railroad Company, party of the second part—witnesseth, that the said parties of the first part, in consideration of the sum of nineteen thousand dollars in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, convey, and confirm unto the said parties of the second part and to its heirs and assigns forever fifty-four fifty-*fith* parts of the following piece or parcel of land situate in the county of Cook and State of Illinois, and described as follows, namely: A part of section of twenty-two (22), in township No. thirty-nine (39) north, of range fourteen (14) east of the third principal meridian, and within the city of Chicago;

Beginning at a point fifty feet west of the centre line of the Illinois Central R. R. main track and on the line of land formerly belonging to Giles Spring, and five hundred and eighty-four $\frac{50}{100}$ feet ($584\frac{50}{100}$) east of the east line of Michigan avenue, running thence northerly parallel with the railroad line to a point four hundred and sixty-seven $\frac{50}{100}$ feet ($467\frac{50}{100}$) east of the east line of Michigan avenue, thence east to Lake Michigan, thence southerly with the lake to a point due east of the place of beginning, thence west of the place of beginning; together with all and singular the hereditaments and appurtenances thereunto belonging, and the remainders and reversions, and the rents, issues, and profits thereof, and all the estate, right, title, and interest of, in, and to the same belonging to the said parties of the first part either in law or equity.

To have and to hold the said fifty-four fifty-*fith* part of all and singular the said premises above bargained and described with the appurtenances unto the said party of the second part and its assigns forever. And the said parties of the first part for themselves, their heirs, executors, and administrators, do covenant, bargain, and agree to and with the said party of the second part and its assigns, that, at the time of the ensealing of these presents, they are well seized of fifty-four fifty-fifth parts of said premises as a perfect and absolute estate of inheritance in law, in fee simple, and have good right and full authority to convey the same as aforesaid, and that the same are free from all other and former grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature

soever; and that the above bargained premises (except one fifty-fifth part thereof in the quiet and peaceable possession of the said party of the second part, and its assigns), against any and all person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will forever warrant and defend.

In witness whereof the said parties of the first part have hereto set their hands and seals the day and year first above written.

(Signed) AUG'S HERRINGTON, [SEAL.]
A. P. HERRINGTON, [SEAL.]
ALMIRA HERRINGTON, [SEAL.]
JAMES HERRINGTON, [SEAL.]
MARY HERRINGTON, [SEAL.]
ALFRED HERRINGTON, [SEAL.]
SYLVIA HERRINGTON, [SEAL.]
JOSHUA TUTHILL, [SEAL.]
MARY H. TUTHILL, [SEAL.]
MARGARET HERRINGTON, [SEAL.]
THADDEUS HERRINGTON. [SEAL.]

State of Illinois, County of Kane, ss.

I, Luther Dearborn, clerk of the Circuit Court in and for said county of Kane, do hereby certify, that on this 16th day of October, A. D. 1856, personally came before me Augustus M. Herrington, Emily Herrington, Nathan P. Herrington, Almira Herrington, James Herrington, Mary Herrington, Alfred Herrington, Sylvia Herrington, Mary H. Tuthill, Joshua Tuthill, to me personally known to be the identical persons named in, and who executed the foregoing deed, and they severally acknowledged that they had executed said deed as their free and voluntary act for the uses and purposes therein named.

And the said Emily Herrington, wife of the said Augustus, and the Almira, wife of the said Nathan P., and the said Mary, wife of the said James Herrington, and the said Sylvia, wife of the said Alfred Herrington, having been by me examined separate and apart from their said husbands, and the contents and meaning of said deed having been by me first made known and fully explained to them, they severally acknowledged, that they executed the same freely and voluntarily, and without the fear or compulsion of their said husbands respectively.

In witness whereof I have hereunto set my hand and affixed the seal of said Kane Co. Cir. Court, the day and year aforesaid.

(Signed) L. DEARBORN, [SEAL.]
Clerk.

State of Illinois, County of Peoria.

I, Charles Kettelle, clerk of the County Court in and for said county, do hereby certify, that on this 15th day of November, A. D.

1856, personally appeared before me Thaddeus Herrington, to me personally known to be the identical person named in, and who executed the foregoing deed, and acknowledged that he executed said deed as his free and voluntarily act for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and official seal, the day and year aforesaid.

(Signed) CHARLES KETTELE, [SEAL.]
Clerk.

No. 79,005.

Filed 12th Dec., 1856.

Endorsed: Recorded in book 122 of deeds, page 142.

State of Illinois, county of Cook, ss.

I, William L. Church, clerk of the Circuit Court and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify, that the annexed is a true and correct copy of a certain instrument filed in my office, on the 12th day of Dec., A. D. 1856, and recorded in book No. 122 of deeds, on page 142, the parties to the same being A. M. Herrington et al., of the first part, and the Illinois Central Railroad Co. of the second part.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 27th day of September, A. D. 1859.

[SEAL.] WM. L. CHURCH,
Clerk of the Circuit Court,
and Ex-Officio Recorder of Cook County.

And this day, to wit, the nineteenth day of October, A. D. 1859, in the October term, A. D. 1859, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

WALTER LAFLIN vs. AUGUSTUS M. HERRINGTON, NATHAN P. HERRINGTON, JAMES HERRINGTON, ALFRED HERRINGTON, JOSHUA TUTHILL, and MARY TUTHILL, his wife, MARGARET HERRINGTON, CHARLES HERRINGTON, THADDEUS HERRINGTON, and CHARLES HERRINGTON, and THE ILLINOIS CENTRAL RAILROAD COMPANY.	In Chancery.

Now comes the complainant by his solicitor, and prays an appeal in this behalf to the Supreme Court of the United States, which is granted upon his filing bond in the penalty of fifteen hundred dollars, conditioned according to law, with M. Laflin surety therein given.

And afterwards, to wit, the twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-nine, came the said complainant, Walter Laflin, by his said solicitors, and filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, his appeal bond in the said entitled cause, which said appeal bond is in the words and figures following, to wit:—

Know all men by these presents, that we, Walter Laflin as principal, and Matthew Laflin as his surety, are held and firmly bound unto Augustus M. Herrington, Charity Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Jane Herrington, Thaddeus Herrington, Joshua Tuthill, and Mary, his wife, Margaret Herrington, Charles Herrington, and The Illinois Central Railroad Company, in the penal sum of fifteen hundred dollars, for the payment of which well and truly to be made unto the said Augustus M. Herrington, Charity Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Jane Herrington, Thaddeus Herrington, Joshua Tuthill, and Mary, his wife, Margaret Herrington, Charles Herrington, and The Illinois Central Railroad Company, their heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of October, A. D. 1859.

Whereas, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine, at *at* term of the Circuit Court of the United States, then being held in Chicago, in and for the Northern District of Illinois, sitting in Chicago, a decree was rendered in and by the said court, in a certain cause then pending in said Circuit Court in equity, wherein the said Walter Laflin was complainant, and the said Augustus M. Herrington, Charity Herrington, Nathan P. Herrington, James Herrington, Alfred Herrington, Jane Herrington, Thaddeus Herrington, Joshua Tuthill, and Mary, his wife, Margaret Herrington, Charles Herrington, and The Illinois Central Railroad Company, were defendants, in favor of said defendants against said complainant, dismissing the bill of complaint therein and for costs, from which decree the said Walter Laflin has prayed an appeal to the Supreme Court of the United States.

Now, therefore, the condition of this obligation is such that if the said Walter Laflin shall prosecute his said appeal to effect and without delay, and answer all damages and costs in case the judgment therein of the said Circuit Court aforesaid shall be affirmed, then this bond to be void, or otherwise to remain in full force.

WALTER LAFLIN, [SEAL.]
By MATTHEW LAFLIN,
Att'y in Fact.
MATTHEW LAFLIN. [SEAL.]

I approve of security to the above bond.

C. BECKWITH.

Approved. THOMAS DRUMMOND.

Endorsed: Filed Oct. 20th, 1859.

WM. H. BRADLEY, Clerk.

Northern District of Illinois, ss.

I, William H. Bradley, clerk of the Circuit Court of the United States, for the Northern District of Illinois, do hereby certify the above and foregoing to be a full, true, and complete transcript and proceedings in the cause wherein Walter Laflin is complainant, and Augustus M. Herrington and others are defendants, as the same appears from the records of said court in said cause on file therein, and now remaining in my custody.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court at my office in Chicago, this twenty-second day of November, in the year A. D. one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth year.

[SEAL.] WILLIAM H. BRADLEY, Clerk.

Filed, 30th November, 1859.

SUPREME COURT U. S.

No. 100.

WALTER LAFLIN, Appellant,
vs.
AUGUSTUS M. HERRINGTON AND AL., and THE ILLINOIS CENTRAL RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Points of the Appellees.

I.

The appellants' bill of complaint seeks the surrender of a sheriff's certificate of sale of certain lands to one William H. Adams, and by virtue of the certificate of sale, and the proceedings in pursuance of which it was given, the appellant claims title to the lands therein described. The judgment against James Herrington the elder not having been revived against his heirs, the execution issued upon it was a nullity, and the sale made under it conferred no title. The certificate of sale which the appellant seeks is therefore no evidence of title, and should not be surrendered to him.

Turney *vs.* Young, 22 Ills., 253.
Turney *vs.* Gates, 12 Ills., 141.

II.

The case made by the bill is, that Augustus M. Herrington, one of the appellees, obtained the certificate of sale by false and fraudulent representations, and that the assignment upon the back of the certificate was perfected by Herrington fraudulently inserting his name in the blank assignment written thereon. These charges were known to be false when the bill was drawn, and the bill cannot, under such circumstances, be sustained upon another ground.

Record, pp. 7, 9.
Farnsworth's dep., Record, 129.

III.

The appellant is simply a purchaser of the right to set aside a legal instrument. He has no standing in a court of equity.

IV.

Adams was clothed with all the legal *indicia* of ownership of the certificate of sale; and although he was in fact only an agent, he had power, under the circumstances, to make a sale that would bind Stuart.

V.

Stuart ratified the act of Adams by his conduct and letters.

Adams' dep., Record, p. 39.
Farnsworth's dep., Rec., p. 129 to 138.

The attempted repudiation was too late. If a principal desires to repudiate the act of his agent, he must do it immediately, and give notice to all parties concerned.

VI.

The history of the case shows it to be one of speculation. It is an attempt to obtain property of the value of $400,000 (see Allen's dep., Rec., p. 145) by a technicality, and has been pursued by means not reflecting credit upon those engaged in it. The money due Stuart was tendered, (Rec., p. 141,) and is now deposited in the court below for his use. The bill in favor of Julius C. Smith (p. 146) proved a failure, and then the present attempt was made.

VII.

The appellant cannot have the contract of sale rescinded without placing the appellees in *statu quo*, which would allow them to pay the money and discharge the debt.

VIII.

The letter of Stuart to Farnsworth & Burgess, dated September 22, 1856, was properly admitted in evidence by the court below.

C. BECKWITH,
Of Counsel for Appellees.

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IN THE

SUPREME COURT

OF THE

UNITED STATES

WALTER LAFLIN,
vs.
HERRINGTON
et al.

APPEAL FROM
UNITED S. CIRCUIT COURT
NORTHERN DISTRICT ILLINOIS.

DECEMBER TERM, 1860.

No. 100.

ARGUMENT OF W. T. BURGESS FOR COMPLAINANT

In Court below.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.
1861.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

WALTER LAFLIN, vs. **HERRINGTON et al.**	APPEAL FROM **UNITED S. CIRCUIT COURT** NORTHERN DIVISION ILLINOIS.

STATEMENT OF FACTS.

On the 9th day of June, 1837, Wm. Stuart recovered 58
a judgment in the Circuit Court of Cook County, Ill., against James Herrington, the ancestor of the defendants, for $646.72-100 and costs of suit.

On the 19th July, 1837, an execution was issued to the Sheriff of Kane County, which was lost and never returned; and on the 9th September, 1837, an alias was 59
issued to the Sheriff of Cook County, and returned "No property found."

50 In March, 1839, J. Herrington, the judgment debtor,
died in Kane County, and Charity H., one of the defend-
51 ants, was appointed his administratrix by the probate
Court of that county. On the 13th day of October, 1854,
50 Stuart, by Farnsworth and Burgess, his attorneys, served
&61 notice upon Charity Herrington, the administratrix, of the
existence of this judgment and of intention to sue out
execution, and also of a motion for an order of Court to
supply the loss of the execution issued July 19, 1837,
67 which was done by order of that court January 4, 1855,
and on the 16th January, 1855, a fi. fa. was issued to
Sheriff of Cook county against the lands and tenements
which were of James Herrington, deceased, at the time
68 of his death. Under this execution a levy was made
upon the lands in controversy, of which he died seized;
and the same were sold March 26, 1855, in four parcels,
having a common boundary north and south, and the first
tract bound west by west line of ¼ section, and east by
State; second, by State street west and Wabash avenue
east; third, by Wabash avenue west and Michigan ave-
nue east; and fourth, by Michigan avenue west and Lake
Michigan east. Bid on each tract $344.60, and sold to
William H. Adams, who was the agent of Stuart, and as
such employed F. & B. to collect the judgment.

The tract is a strip of land extending across the qr.
section, its west boundary on State street, and is divided
by three streets, viz: Wabash, Michigan, and Indiana
avenues. About ten months after the sale, Augustus M.
Herrington applied to Burgess, one of Stuart's attorneys,
to purchase the certificate of sale instead of redeeming,
alleging as a reason for buying it that he wanted to cut
off a claim that Matthew Laflin—with whom he and

others, the heirs of James Herrington, were litigating—had to a fifty-fifth of the property; and that if he (Burgess) would obtain from Adams an assignment of the certificate having the name of the assignee blank, he would pay the amount in money that it would require to redeem from the sale. Burgess, upon stating this proposition, obtained from Adams an assignment endorsed upon the certificate, with a blank in it for the name of the assignee, with instructions not to deliver it until the money was paid. Burgess left the certificate in the office of F. & B. In his absence, A. M. H. went to the office and saw Farnsworth, who produced the certificate to him with the assignment endorsed upon it in blank. A. M. H. stated to him that the sale was irregular as to one of the pieces, and proposed to give him (F.) his note instead of the money. Farnsworth finally arranged it with him to take two notes, one for $1278.42, to F. & B., date Mar. 6, 1855, and payable September 1, 1856, with ten per cent. interest, and the other for $108.34, to F. & B., dated about the time of the transaction, and payable in a few days thereafter, and gave him the certificate, filling up the blank with A. M. Herrington's name, with the understanding that if Stuart, or Adams, Stuart's agent, was not satisfied with the arrangement, then the assignment should be returned. The small note was soon after paid Farnsworth; but it does not appear that either Adams or Stuart ever knew of the giving or payment of this note of $108 34. The bill charges that neither of them knew it till October 1st, 1856, or about that time. Adams, on being informed of this transaction, expressed himself dissatisfied with it, and immediately wrote to Stuart informing him that F. had taken a note for the amount due on the judgment from A. M. Herrington. To this, Stuart, on 25th February, 1856, replies to F. & B., distinctly and unequiv-

ocally repudiating the transaction. This letter was shown
131 to A. M. H. on the 5th March, 1856, one day before the expiration of one year from the date of sale, at Geneva, in Kane county, about 37 miles from Chicago, between which places there was communication by railway. Adams and Herrington have an interview about this transaction, which results in the matter being left to Stuart for ratifi-
41 cation or not—Adams stating the matter was Stuart's; that he was acting as Stuart's agent, and if he (Stuart) was satisfied, then he (Adams) would be. On the 22d of
137 September, 1856, Stuart writes a letter to his attorneys, as follows:

"BINGHAMPTON, Sept. 22, 1856.

"*Messrs. Furnsworth & Burgess:*

"SIRS: I am greatly surprised and disappointed to learn from Mr. Wm. H. Adams, this morning, that Herrington continues to refuse or neglect to pay the note which was taken from him, and which, according to its terms, was due September 6. The certificate of sale was given up without Mr. Adams' knowledge and against his consent; he signed the certificate in blank, on the condition that it might be given up when the *money* was *paid*, and not otherwise. Between all parties, I am thus wrongfully, and greatly to my inconvenience, kept out of the money. I have written to Mr. Adams to employ at once some able and honest lawyer, if he has the good luck to find one, to take immediate measures to settle this matter. I have been shamefully treated, and my confidence and that of Mr. Adams has been utterly abused. If I am compelled to go to Chicago again on this business, I shall make an expose of the whole affair.

"Yours, &c.

"WM. STUART."

This letter was sent by F. & B. to A. M. Herrington, with a request to arrange the matter immediately, and to return the letter Herrington keeps the letter and seeks to introduce it as a ratification of Farnsworth's act in taking the notes and delivering the assignment of the certificate, which use of it is objected to by Stuart and the complainants as an abuse of professional confidence. 36

October 9, 1856, Adams makes a deed assigning the certificate to Julius C. Smith, which is recorded October 10, 1856. Stuart, on the 1st October, 1856, makes a deed to complainant of the property, recorded December 29, 1856; and Smith, by deed dated November 20, 1856, conveyed the property to complainant, recorded December 29, 1856. 71 72 73

Smith filed a bill in chancery, in the Cook County Court of Common Pleas, which was dismissed January 5, 1857, but when it was filed does not appear from the record, which bill states the facts the same as in the bill in this case, except that no allusion is made in it to the fact that Adams bid the property off for Stuart, or subsequently acted as his agent. This bill and order of court are put in evidence by the defendants.

The litigation pending as to the title to this property between Matthew Laflin, the brother of the complainant, and the heirs of Herrington, at the time of this sale, may be briefly stated. Two judgments had been recovered against James Herrington, and after his death, without notice or reviving the judgments, in 1840 the lands in controversy in this suit were sold under executions upon those judgments, and the title subsequently acquired by M. Laflin. The taxes were all paid regularly except one

year, when Laflin paid for twelve acres out of the thirteen without specifying what, and the thirteenth acre was sold; for this trifling irregularity, if it could be called one, Laflin lost the land.

The cases are reported in 16 Ill. 301, and 17 Ills. 399.

Upon this state of the case, the complainants claimed that the assignment of the certificate was never in fact del vered; that the act of Farnsworth, in taking the notes of Herrington and delivering the assignment, was contrary to the instructions given at the time of the deposit of the paper with Burgess.

The defence concede this to be so, but insist:

I. That the sale of the land was irregular and void.

II. That the delivery of the assignment of the certificate was subsequently ratified both by Adams and Stuart; and, in support of such ratification, rely upon the letter of Stuart of date September 22, 1856.

The case on the part of plaintiff is so clearly made out, that it is not deemed necessary to use any arguments to sustain it, and unless the defence can succeed in one or both of their proposed defences, he is entitled to the decree prayed for; and so I shall address myself to a reply to them.

And first, can the defendants, claiming this certificate by way of assignment, when called to cancel and surrender that assignment, say the certificate is a nullity? Are they not estopped, in this suit from relying upon such a defence? In any event, will it not be presumed that the proceedings are in all respects regular, and it rests upon them to show affirmatively any irregularity?

As to the ratification of the acts of Farnsworth by Stuart, the proof is very clear, both from Adams' and Farnsworth's testimony, that Herrington knew, when he was dealing with Farnsworth, that Stuart was the real party in interest, and that Adams was merely his agent, and held the certificate for his benefit, and that to render Farnsworth's acts binding, it was necessary to have Stuart's assent to it. Adams' agency was that merely of collecting the money. He had no authority to sell the claim. He was only authorized to employ an attorney to collect and possibly to supervise and direct in the steps taken to collect. The evidence clearly goes no farther. Then his ratification, even if proved, would amount to nothing.

Brewster vs. Hobert., 15 Pick. 302.

But the evidence is the other way. He says he never did ratify it; and Farnsworth does not pretend to give what occurred between Adams and Herrington at the interview about which he testified. We are, then, left to find in the record some ratification by Stuart; and here the rule of law must be kept in view that a ratification can only be binding which is made with knowledge of *all* the material acts done by the agent; that the principal, to be bound by a ratification, must at the time have been fully advised of every act of his agent, and that if any material fact is withheld the ratification is a nullity.

Now, upon this record what facts are proved showing a ratification by Stuart of the acts done by Farnsworth in surrendering the assignment of the certificate? There is nothing but the letter of 22d September, 1856, written to his attorneys. The introduction of this was objected to both before the Commissioner and at the hearing, as being a breach of professional

confidence. Is it so? What is the letter about? It is exclusively about matters which Stuart, the client of F. & B., had before that time placed in their hands to attend to, and of their acts touching the management of that business. So far as it is of any use to the defendants, that is its character — a letter written about business in their hands as his professional advisors.

3 Barb. Ch. Reps., 595, *Bank of Utica vs. Mesereau.*—Colton, the attorney of Mesereau, had been examined touching statements made by Mesereau to him at the time he (Colton) as such attorney, was drawing up a warrant to confess judgment for Mesereau to sign. In excluding his evidence, WALWORTH, Chancellor, says: "I think the true principle in reference to privileged communications between attorney and client to be, that when the attorney is professionally employed, any communications made to him by his client with reference to the object or subject of such employment is under the seal of professional confidence and is entitled to protection as a privileged communication." He then proceeds to review numerous decisions in America and England.

Coveney vs. Tannahill, 1 Hill 35; Opinion by BRONSON, J., and cases cited at length.

Parker vs. Carter et al., 4 Minf. Va. Rep. 285: "This court understands it to be the settled law, that counsel and attorneys ought not to be permitted to give evidence of facts imparted to them by their clients when acting in their professional character; that they are considered as identified with their clients and of necessity intrusted with their secrets, which, therefore, without a dangerous breach of confidence, cannot be revealed; that this obligation of secrecy continues always, and is the privilege of the client, and not of the attorney."

Benjamin vs. Coventry, 19 Wend. 253. In this case the matter in controversy had been assigned, and it was held that if the assignor *waived* the privilege, his assignee could not insist upon it.

In the case at bar both Stuart and the complainant object to the use of the letter.

But what information does this record show was communicated to Stuart of the acts done by Farnsworth? Adams says (page 40) that "shortly before the time of redemption expired, I think probably in January, 1856 — I don't recollect the exact date — Mr. Farnsworth, the partner of Mr. Burgess delivered the certificate to Augustus M. Herrington, and *took a note from him for the amount due on the execution, the note being made payable in the following September.* I immediately wrote to Mr. Stuart, informing him of the fact, and he replied that he was very much dissatisfied with the arrangement and repudiated it entirely. He (Stuart) also wrote to Farnsworth disapproving of the course taken." This letter is identified by the witness, and in it Stuart says (page 49) "informing me that Mr. Burgess, of your firm, had settled with Herrington and taken *his note*, payable in September next, *for the amount of the execution* in my favor;" and in the letter of Sept. 22, 1856 (137), "to pay the note which was taken from him, and which, according to its terms, was due September 6th."

Farnsworth in his depositions states, in reply to 17th and 26th Int'y (p. 131), in general terms, that he informed Adams of what he had done and of the conversation he had with Herrington when he gave him the certificate. But the inquiry is not what Adams knew, but what Stuart knew. The bill distinctly denied that Stuart ever knew of the giving of this smaller note, and the fact appears from all his letters. Adams

says nothing about the small note in his deposition, and Farnsworth does not say he ever told him of it. It is not for us to prove that Stuart did *not* know of it; it is for them to show he did. It is a material fact. The giving of a note for $100, and its payment in money to the agent, who claimed to keep it as his fees, if withheld from him is a suppression of a fact important for Stuart to know.

Hastings vs. Bangor House, 18 Maine 439.

Owings vs. Hale, 9 Pet. 629: "No doctrine is better settled, both upon principle and authority than this: that the ratification of an act of an agent previously unauthorized must, in order to bind the principal, be with a full knowledge of all the material facts. If the material facts be either suppressed or unknown, the ratification is treated as invalid, because founded in mistake or fraud.

Dunlap Paley on Agency, 172 and notes.
Copeland vs. Fire Ins. Co. 6 Pick. 203.
Thorndike vs. Godfry, 3 Greenleaf 429.
Willson vs. Arny, 12 How. U. S. 190.

The defendants insist that there was no execution issued according to law within one year after the rendition of the judgment; and, consequently, that the lands of the intestate could not be sold by any execution issued upon the judgment after his death. Whether it could be so or not, is entirely a question of construction of our statutes.

Sec. 1. chap. 57 R. S., p. —, R L. p. 270, provides that all and singular * * lands and tenements and real estate of every person against whom any judgment has been or hereafter shall be obtained, in any court of record either at law or

in equity, for any debt, damages, costs, or other sum of money, shall be liable to be sold upon execution to be issued upon such judgment; and the said judgment shall be a lien on such lands, tenements and real estate, from the last day of the term of the court in which the same may be rendered, for the period of seven years; *Provided*, that execution be issued at any time within one year on such judgment, and from and after the said seven years the same shall cease to be a lien on any real estate as against bona fide purchasers, or subsequent incumbrances by mortgage, judgment or otherwise.

Sec. 2. That when any judgment shall have become a lien as aforesaid, and *the defendant shall happen to die before execution shall have been issued thereon*, the remedy of the person in whose favor the said judgment shall have been rendered shall not be delayed or suspended by reason of the non-age of any heir or heirs of said defendant; but no execution shall issue upon such judgment until the expiration of one year after the death of such defendant; nor shall any previous law of this State which gives no preference to the claims of a creditor of a deceased debtor be so construed as to impair or affect the lien of any judgment as aforesaid.

Sec. 37, p. 307. Whenever a judgment has been or may hereafter be obtained in any court of record of this State, against any person or persons who has or shall, after the rendition of said judgment, die, it shall be lawful for execution to issue against the lands and tenements of said deceased person or persons, without revival of the judgment against their heirs or legal representatives; *Provided*, however, the plaintiff or plaintiffs in execution, or his or their attorney, shall give to the executor or administrator, if there be any, of said deceased person or persons, at least three months' notice, in writing, of the existence of said judgment, before the issuing of execution;

and *provided further*, that no execution shall issue until after the expiration of twelve months from the death of such deceased person or persons.

It should be remarked here, that our revised statutes are a mere compilation of then existing statutes, printed together for sake of easy reference.

With these statutes we claim that the proceedings in this case have strictly complied. Admit that no execution whatever was issued prior to the one under which the land was sold January 14, 1855: if notice was given, as required by sec. 37 above, to the administratrix, no prior execution was necessary.

The first clause of section 1 declares all land liable to be sold upon execution to be issued on the judgment. They were not liable before. This clause makes them so; and, so far as defendant and plaintiff are concerned, no farther legislation was necessary, to define their rights; but as to third persons, provisions were necessary to confine the right to a less time, and in other respects, other than the mere declaration of liability to be sold under execution. So the rest of this section has reference to third persons. It requires that, in order to preserve the lien, execution shall have issued within a year; that it shall be enforced within seven years; otherwise the lien ceases — as to whom? Not the judgment debtor, or *volunteers;* but as to "bona fide purchasers or subsequent incumbrances by mortgage or otherwise."

As to the defendant, the right and power to sell is perfect on the rendition of the judgment, and so remains, subject to common law restrictions applicable to the writ.

According to the common law, when defendant died, whether before or after the expiration of one year, no execution could

issue without a sci. fa.; and whether execution had been issued or not, made no difference, unless the writ was actually in the hands of the officer. Section 2 evidently intends to provide for the continuance of the lien of the judgment, for it says, explicitly, "be so construed as to impair or effect the lien of any judgment as aforesaid. What judgment? Any judgment that might be recovered, and the defendant die before execution issued. As to judgment creditors, &c., if the fi. fa is not issued within the year the lien may be gone, but as to the defendant and his heirs no such issuance is required: and that is the present case.

But this view of the statute becomes still clearer when we consult the provisions of the 37th section of the act of 1845. This provision was introduced into the statutes in S. Laws of 1843, p. 168. It commences, using the same words, substantially, as the 2d, and then provides that a scire facias need not be issued, but, instead thereof, three months' notice shall be given to the admin strator, *if there be any*; and restricts again the issuing of the execution until after the year after the defendant's death. Should there be no administrator, it is evident execution may go without notice.

It says nothing about liens, either as against the debtor or any one else; nothing about the issuing of a prior execution; nothing but the bare recovery of judgment, the death of the defendant thereafter, and then it shall be lawful for execution—after the lapse of twelve months from the death of the defendant, upon the giving of three months' notice to the administrator, if any, in writing, without reviving the judgment—to issue against the lands and tenements of the deceased.

This is a plain remedial statute. Such a construction should be put upon it as will advance the remedy and give it force.

What right have the counsel to insist that, in section 37, the words "provided execution be issued at any time within one year" be interpolated. By so doing, you add to it — and not construe it.

What is the reason why common law stayed execution?

TIDD says (page 1003) "The reason why the plaintiff is put to his scire facias, after the year, is because, when he lies by so long after judgment, it shall be presumed he hath released the execution, and therefore the defendant shall not be disturbed without being called upon, and having an opportunity, in court, of pleading the release, or showing cause, if he can, why the execution should not go."

And again (1021), "That when a new person is to be benefitted or charged by the execution of a judgment, there ought to be a scire facias to make him party to the judgment. * * * * On this rule depends the cases of marriage, bankruptcy, and *death*.

Now, suppose, at common law, you have not issued execution within the year, and the defendant is dead, is your judgment gone? Clearly not. You issue your scire facias against the administrator, heirs, and tertenants; but our statute dispenses with this proceeding, and substitutes in place of it the notice to the administrator.

What the rights of a third party would be, a purchaser, or subsequent incumbrances, is not before the court. The heirs here are the only persons affected by the provisions of the statute, whatever the rights of the plaintiff in execution and such third persons may be. If they are not to be affected by the statute, nobody can be. A man has heirs, by presumption of law; but he has not creditors, otherwise than upon proof

to the court. Nothing of that kind appears in this case, and the court cannot presume it. But suppose there are such creditors or purchasers: the heirs can take no advantage of it; they stand in the shoes of their ancestor. Could he be permitted, for one moment, to resist the execution and sale because there were other claims on the property paramount to the one under which it had been sold.

4 Gil. 54, citing a case from Ohio, sustains the very doctrine within: "That when revived, so far as the judgment debtor was concerned, the lien of the revived judgment existed in all its force; but that it did not follow that the rights of others, acquired, or subsisting under the dormancy of the judgment, were subordinate to the revived lien."

5 Ohio, 511.
See 15 Illinois — A concurrent remedy.

Turney vs. Gates, 12 Illinois 141. This was a common law proceeding, and was not only an attempt by one creditor to gain advantage over others, when by law he was not entitled to it, but also the heirs were not parties. This view of the decision appears in the last clause, where the court says, "In the distribution of the assets of deceased persons, under our statute, judgment creditors without a lien, and simple-contract creditors, are put on the same footing.

But there are no creditors in the case at bar, and none could be affected by this proceeding any way. It is precisely the same as selling the lands of the debtor after the expiration of seven years: the sale is good so far as he is concerned, but good for nothing as to other judgment creditors.

In the case of 2 Gilman 118 was involved again the priority of liens, as an examination of the case will show.

So in 4 Gil. 55, the question of priority of liens was passed upon, and, as already said, they cite a case from Ohio, deciding that, as to the debtor, the judgment is revived in full force.

The case in 4 Gil. 285 is an another contest among creditors, and decides nothing, so far as this is concerned.

On examination of all these cases, except the allusion made in the case cited from Ohio, no reference is made to a case merely between the heirs of the deceased and the judgment creditors.

The section of the statute, however, under which this proceeding is had, is different, in its phraseology, from the act of 1829. This has reference to the claims of other creditors. But the 37th section of 1845 has no reference to any lien, and leaves the party, after the expiration of one year from the death of the party, to issue his execution against the lands and tenements of the deceased, saying nothing about liens or priorities, and leaving them entirely unaffected.

In the case of *Turney et al. vs. Young*, 22 Ills., the two modes required by our statute were as follows : Under the Stewart & Brown judgment, the statutory remedy was followed ; that was a case in which the lien existed against other creditors, and of course the point was not before the court there. In the other case, where a judgment was sought to be revived by scire facias, there it was necessary to make the heirs parties ; they were not parties, and of course the proceeding was a nullity as to them ; but had notice been served, under the statute, then the question would have been before the court for its adjudication directly. The proceedings by scire facias were clearly void as to the heirs — not because the judgment was not a lien, but because they were not parties.

In the case at bar, the notice was given to the administrator. What is the effect of the notice? It is precisely the same as if the heirs were made parties to a scire facias; and, notice served upon them, it is their duty to come in and defend, and if they fail to do so, then they are concluded.

They should have appeared in court and resisted the issuing of the execution; they cannot now, in this court, attack the proceeding collaterally, having had their day in court and failing to defend.

See 15 Illinois 309 — where the statutory remedy and the scire facias are held to be concurrent remedies.

Pickett vs. Hartsock, 15 Ills. 279. In this case a judgment was recovered in 1843, amended in 1844, and revived by notice; and, after death, executions were issued, under statute, upon notice. But as a judgment of 1843, the seven years had run out; and the court say it could not be enforced against the plaintiff, who was a bona fide purchaser.

The lien was as effectually gone as though execution had not been issued in one year; and yet the court does not say that the execution was void, but that it could not be enforced against bona fide purchaser; and as a judgment of 1844, the notice to revive it was insufficient

But however this construction of this statute may be, we claim that execution was *issued* within a year — within the meaning of the word *issue*, as that term is used in the statute. There appears by the record to have been two executions issued: one on the 19th July, 1837, which was never returned, and the other September 9th, 1837. This last appears to have been regularly returned (p. 60). The defendants claim that

this was delivered to the Sheriff of Kane county; but there is no proof on the subject, and the return does not show but that it was the Sheriff of Cook county.

The main point made by the defendants is, that the writ of execution is not considered to be *issued* until it is actually delivered to the Sheriff. We have no decisions upon the point in our State; and our statutory provisions are sufficiently clear.

Purple statute 314, sec 40, provides: The clerks of the Circuit Courts may issue process in all cases arising therein, which process shall bear teste in the name of and be signed by such clerks respecti ely, *and dated on the days on which they issue*, and be made returnable according to law; and all process issuing from the said Circuit Courts shall be sealed with the judicial seal which shall be provided for that purpose; but in case there shall not be a judicial seal, the clerk shall affix his private seal, until a public one shall be provided.

Same book, page 642, sec. 8: "All executions shall be made returnable ninety days after date; and no writ of execution shall bind the property of the goods and chattels of any person against whom such writ shall be *issued* until such writ shall be *delivered* to the Sheriff or other officer to be executed."

In this very section, occurring in the same chapter, when the power to levy and sell land is given, a distinction is made between the issuing of the writ and its delivery to the Sheriff. If a writ was not to be considered as issued until it was delivered to the officer, there was no necessity for this distinction. And by section 40, above cited, they are required to date all processes on the day they are issued; and executions are returnable in ninety days thereafter. If they are not, in law, issued until delivered to the Sheriff, all executions would, then,

be returnable in ninety days after delivery to the Sheriff, and there could be no certainty in a matter which the law designed should be made certain.

Again, under section 8 of bail act, page 125, same book, the distinction between issue and delivery is clear : the delivery is to be made at least ten days before the return day.

Now it is clear, that, as to both these executions of the 19th July and 9th September, they were issued by the clerk and taken from office. What became of them is immaterial ; — whether delivered to Sheriff or not. So far as this question of the *issuing* of an execution within one year is concerned, the statute does not require the execution to be delivered to the Sheriff. Had it intended that, it would have expressed it, as it has done in the bail act, page 125.

W. T. BURGESS,

Solicitor for the Complainant in the Court below.